10-575

A. 1879

Strong

Dec. 15 79 Rec'd by DJ

17 Wall. & Peh.

Postponed

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~348.~~ 118

ORLANDO B. DICKERSON, SURVIVOR, PLAINTIFF IN ERROR,

vs.

CALVIN COLGROVE ET AL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

FILED MARCH 24, 1877.

17 Wall 273

SUPREME COURT OF THE UNITED STATES.

No. 348.

ORLANDO B. DICKERSON, SURVIVOR, PLAINTIFF IN ERROR,

vs.

CALVIN COLGROVE ET AL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

INDEX.

	Original.	Print.
Assignment of errors	1	1
Clerk's certificate	7	3
Writ of error	8	3
Acknowledgment of service	9	4
Citation	10	4
Bond	12	5
Declaration	14	6
Plea	17	9
Stipulation waiving jury	19	10
Notice of substitution	21	11
Letters of administration	23	12
Petition of administrator	29	14
Stipulation as to facts	32	15
Finding of facts and conclusions	38	17
Exceptions to findings	45	20
Judgment	49	21
Bill of exceptions	51	22

1 UNITED STATES OF AMERICA:

In the Supreme Court of the United States. Assignment of errors.

ORLANDO B. DICKINSON, SURVIVING PLAINTIFF, being plaintiff in error,
vs.
CALVIN COLGROVE, WILLIAM H. CIRBY, Cushan Burr, Allen Bronson, Edward Bremel, Elihu Renolds, Benjamin Rounds, Maria T. Edwards, James G. Portman, John Morrison, George Rice, Thomas Spiers, Martin G. Lamport, Almond B. Riford, Charles Petrie, John C. Gates, John Bell, Wallace W. Carpenter, Nathaniel Robins, Sterne Bronson, Edward Palmer, John Brown, James Fonger, Thomas Walker, Harvey C. Jennings, Rufus Bronson, Horace Bronson, Henry C. Morton, Samuel McGuigan, Washington C. Hunter, George K. Hopkins, Sarah Adams, Levi Fowler, Guy Johnson, Michael McKinney, William J. Hess, Albert H. Crowell, Jacob Burrage, Nancy Antisdale, Andrew Shonow, James M. Sorter, Jeremiah Silvers, Henry Kidd, Sarah Vanhorn, Mary Hageman, George Shinneman, Albert B. Nolan, Dudley Montgomery, Elihu Skilling, Charles Courtway, James Slasen, Silas Morton, Seth Riford, Henry Williams, Mary Diman, John C. Ingham, Alfred Graham, Thomas Moodi, George Bryant, Robert Rickerby, David Brown, and Alamanzo Haleman, defendants in error.

Afterwards, to wit, on the day of January, 1877, before the judges of the Supreme Court of the United States, comes said Orlando B. Dickinson, by Jerome B. Fitzgerald, his att'y, and says that in the record and proceedings aforesaid, and also in giving judgment aforesaid, there are manifest errors, as hereinafter stated, to wit:

1. The court erred in so much of his aforesaid written finding of fact as concludes and asserts that the limitation law of the State of Michigan, enacted in 1863, and referred to in said finding, did by retroactive effect or otherwise change and shorten the time within which this action might be brought.

2. The court erred in so much of his aforesaid finding as is as follows: "As the adverse possession in this case commenced April 1st, 1854, the right of action would be barred April 1st, 1869, unless the effect of
2 that statute would be to deprive plaintiff, or those under whom he claims, of a reasonable time within which to bring suit."

3. The court erred in so much of his aforesaid finding as is as follows: "When the fifteen years expired April 1, 1869, the act of 1863 was still in force, and the opinion of the court is that the title of the defendants had passed beyond the effect of the subsequent statute passed April 3rd, 1869, amending section 9 of the act of 1863, so as to give it prospective effect only." The court erred in so much of said finding as is as follows: "Prior thereto, viz, April 1, 1869, defendants' title had vested beyond the reach of legislative authority.

4. The court erred in so much of said finding as *is as* asserts in substance and effect that the plaintiff's right of action has been barred by any statute of limitation.

3 5. The court erred in so much of said finding as is as follows: "Again the letter of Edmund Chauncey, dated April 1, 1856, to Sarah Kline, written in answer to Ebenezer Morton's letter touching said Chauncey's claim to the premises, operates as an estoppel upon Chauncey's claim of title."

6. The court erred in so much of said finding as is as follows: "Chauncey wrote Mr. Morton—wrote me a letter; he wanted to know if I intended to claim any of the Conger farm (the premises in question). You can tell Mr. Morton for me he need not fear anything from me, &c. This coming to Lowell A. Morton's knowledge, he had a right to rely upon what Chauncey wrote; he did rely on Chauncey's letter, and subsequently conveyed by warranty deed to the defendants."

7. The court erred in so much of said finding as is as follows: "The court is of opinion that it estops Chauncey and those claiming under him."

8. The court erred in so much of said finding as concludes and
4 asserts substantially that the *that the* plaintiff is estopped from maintaining this action.

9. The court erred in so much of his decision in the case made prior to the written finding aforesaid as denied the petition of Bacon Wheeler, on file in this suit, to have the grantee, the heir, or administrator of William W. Wheeler, deceased, substituted on the record and in this suit to act in the place of said William W. Wheeler.

10. The court erred in so much of his decision in the case made prior to the written finding aforesaid as declared that William Wheeler having since the commencement of this suit conveyed to Bacon Wheeler all the interest & title of said William W. Wheeler in the land in question, and having subsequently died, therefore this suit must abate as to said William W. Wheeler.

11. The court erred in so much of his decision in this case made prior to said written finding as decided that no person could be substituted in this action in the place of William W. Wheeler, deceased.

5 12. The court erred in so much of the aforesaid written finding as is as follows: "Finally the finding and conclusion of the court is that the defendants do not unlawfully withhold said premises or any part thereof from the plaintiff; let judgment be entered accordingly."

13. There is also error in this, that the finding of facts by the court does not support the judgment aforesaid.

14. There is also error in this, that according to the aforesaid finding of *of* facts by the court in writing, the plaintiff in the circuit court, Orlando B. Dickinson, was entitled to judgment in his favor.

There is also error in this, to wit: That by the record aforesaid it appears that the judgment aforesaid in the form aforesaid was given for the said defendants in error and against the said Orlando B. Dickinson, whereas by the law of the land the said judgment ought to have been given for the said Orlando B. Dickinson and against the said defendants in error.

6 And the said Orlando B. Dickinson, plaintiff in error as aforesaid, by his said attorney, prays that the judgment aforesaid for the errors aforesaid and other errors in the record and proceedings may be reversed, annulled, and altogether held for nothing, and that he may

be restored to all things which he hath lost by occasion of said judgment.

J. B. FITZGERALD,
Attorney for Plaintiff in Error.

EDWARD BACON,
Attorney and Counsel for Orlando B. Dickinson in the Circuit Court.

7 UNITED STATES OF AMERICA,
Western District of Michigan, ss:

I, Chester B. Hinsdill, clerk of the circuit court of the United States for the sixth circuit and western district of Michigan, do hereby certify that in compliance with the annexed writ of error I have hereto annexed the original bill of exceptions signed by the Hon. S. L. Withey, district judge; also that hereto annexed is a true and complete transcript of the records and proceedings in the within mentioned cause, and of the whole thereof.

[SEAL.] CHESTER B. HINSDILL,
Clerk of said Court.

DECEMBER 30TH, 1876.

117 folios, 15c., 17.55; writ of error, 1.50; certificate, 1.00; postage, 50—$20.55.

8 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the western district of Michigan, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, between Orlando B. Dickenson, surviving plaintiff (William W. Wheeler, the only other plaintiff, having died, and the suit being declared abated as to him), and Calvin Colgrove, William H. Cirby, Cushan Burr, Allen Bronson, Edward Bremel, Elihu Renolds, Benjamin Rounds, Maria T. Edwards, James G. Portman, John Morrison, George Rice, Thomas Spiers, Martin G. Lamport, Almond B. Riford, Charles Petrie, John C. Gates, John Bell, Wallace W. Carpenter, Nathaniel Robins, Sterne Bronson, Edward Palmer, John Brown, James Fonger, Thomas Walker, Harvey C. Jennings, Rufus Bronson, Horace Bronson, Henry C. Morton, Samuel McGuigan, Washington C. Hunter, George K. Hopkins, Sarah Adams, Levi Fowler, Guy Johnson, Michael McKinney, William J. Hess, Albert H. Crowell, Jacob Burrage, Nancy Antisdale, Andrew Shonow, James M. Sorter, Jeremiah Silvers, Henry Kidd, Sarah Vanhorn, Mary Hageman, George Shinneman, Albert B. Nolan, Dudley Montgomery, Elihu Skilling, Charles Courtway, James Slasen, Silas Morton, Seth Riford, Henry Williams, Mary Diman, John C. Ingham, Alfred Graham, Thomas Moodi, George Bryant, Robert Rickerby, David Brown, and Alamanzo Haleman, defendants, a manifest error hath happened, to the great damage of the said Orlando B. Dickenson, as by him complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October

next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Morrison R. Wait, Chief Justice of the said Supreme Court, the second Monday of October, in the year of our Lord one thousand eight hundred and seventy-six.

[SEAL.] CHESTER B. HINSDILL,
Clerk of the Circuit Court of the United States for the Western Dist. Michigan.

Allowed by—

S. L. WITHEY,
Dist. Judge.

(Indorsed:) Orlando B. Dickenson vs. Stern Bronson et al. Writ of error. Filed Oct. 24, '76. Chester B. Hinsdill, clerk.

9 UNITED STATES OF AMERICA:

In the circuit court of the United States for the sixth circuit and western district of Michigan.

ORLANDO B. DICKINSON, SURVIVING PLAINTIFF,
vs.
STERNE BRONSON ET AL.

Action of ejectment.

Judgment in favor of defendants rendered in 1875.

Writ of error and citation for removal of the record and proceedings in this case into the Supreme Court of the United States. Citation dated Oct. 24, 1876.

We acknowledge service on us of a copy of said citation this 25th day of October, 1876.

HUGHES, O'BRIEN & SMILEY,
Att'ys for Def'ts in the U. S. Circuit Court.

10 THE UNITED STATES OF AMERICA, *ss:*

To Calvin Colgrove, William H. Cirby, Cushan Burr, Allen Bronson, Edward Bremel, Elihu Renolds, Benjamin Rounds, Maria T. Edwards, James G. Portman, John Morrison, George Rice, Thomas Spiers, Martin G. Lamport, Almond B. Riford, Charles Petrie, John C. Gates, John Bell, Wallace W. Carpenter, Nathaniel Robins, Sterne Bronson, Edward Palmer, John Brown, James Fonger, Thomas Walker, Harvey C. Jennings, Rufus Bronson, Horace Bronson, Henry C. Morton, Samuel McGuigan, Washington C. Hunter, George K. Hopkins, Sarah Adams, Levi Fowler, Guy Johnson, Michael McKinney, William J. Hess, Albert H. Crowell, Jacob Burrage, Nancy Antisdale, Andrew Shonow, James M. Sorter, Jeremiah Silvers, Henry Kidd, Sarah Vanhorn, Mary Hageman, George Shinneman, Albert B. Nolan, Dudley Montgomery, Elihu Skilling, Charles Courtway, James Slasen, Silas Morton, Seth Riford, Henry Williams, Mary Diman, John C. Ingham, Alfred Graham, Thomas Moodi, George Bryant, Robert Rickerby, David Brown, and Almanzo Haleman, greeting:

You are hereby cited and admonished to be and appear at a Supreme

Court of the United States, to be holden at Washington, on the second Monday of October next, 1877, pursuant to a writ of error filed in the office of the clerk of the circuit court of the United States for the sixth circuit and western district of Michigan, in which writ Orlando B. Dickinson, surviving plaintiff (William W. Wheeler, the only other plaintiff in the circuit court, having died, and the suit in said court being declared abated as to him), is plaintiff in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable S. L. Withey, district judge of the western district of Michigan, and holding there the circuit court of the
11 United States for said district, this 24th day of October, in the year of our Lord one thousand eight hundred and seventy-six.

S. L. WITHEY,
Dist. Judge.

WESTERN DISTRICT OF MICHIGAN,
County of Kent, ss:

On this day of 25th, in the year of our Lord one thousand eight hundred and seventy-six, personally appeared Edward Bacon before me, the subscriber, a notary public in and for said the county of Kent, in said district, and makes oath that he delivered a true copy of the within citation to on Hughes, O'Brien and Smiley, attorneys for the within-named defendants, and that a receipt of such service, duly signed by said attorneys, is hereto annexed; such service was on this 25th day of October, A. D. 1876, at the city of Grand Rapids, in said district.

EDWARD BACON.

Subscribed and sworn to before me this 25th day of October, A. D. 1876.

A. B. CARRIER,
Notary Public, Kent Co., Mich.

(Indorsed:) United States of America. Orlando B. Dickinson, surviving plaintiff and plaintiff in error, vs. Calvin Colgrove, Sterne Browson et al., def'ts in error. Citation to appear in U. S. Supreme Court. Filed Oct. 24, '76. Chester B. Hinsdell, clerk.

12 Know all men by these presents, that we, Orlando B. Dickinson as principal, and Obadiah Jackson and Wilson Ames as sureties, all of the city of Chicago, in the county of Cook, and State of Illinois, are held and firmly bound unto Calvin Colgrove, William H. Cirby, Cushan Burr, Allan Bronson, Edward Bremel, Elihu Renolds, Benjamin Rounds, Maria T. Edwards, James G. Portman, John Morrison, George Rice, Thomas Spiers, Martin G. Lamport, Almond B. Riford, Charles Petrie, John C. Gates, John Bell, Wallace W. Carpenter, Nathaniel Robins, Sterne Bronson, Edward Palmer, John Brown, James Fonger, Thomas Walker, Harvey C. Jennings, Rufus Bronson, Horace Bronson, Henry C. Morton, Samuel McGuigan, Washington C. Hunter, George K. Hopkins, Sarah Adams, Levi Fowler, Guy Johnson, Michael McKinney, William J. Hess, Albert H. Crowell, Jacob Burrage, Nancy Antisdale, Andrew Shonow, James M. Sorter, Jeremiah Silvers, Henry Kidd, Sarah Vanhorn, Mary Hageman, George Shinneman, Albert B. Nolan, Dudley Montgomery, Elihu Skilling, Charles Courtway, James Slasen, Silas Morton, Seth Riford, Henry Williams, Mary Diman, John C. Ingham, Alfred Graham, Thomas Moodi, George Bryant, Robert Rick-

erby, David Brown, and Alamanzo Haleman, in the full and just sum of three hundred dollars, to be paid to the said obligees, their certain attorney, executors, administrators, or assigns, to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, and dated this 24th day of October, in the year of our Lord one thousand eight hundred and seventy-six.

Whereas lately in a suit depending in the circuit court of the United States for the sixth circuit and western district of Michigan, between said Orlando B. Dickinson as surviving plaintiff and said obligees as defendants, judgment was rendered in favor of said defendants and against said plaintiff, and the said plaintiff, Orlando B. Dickinson, having obtained a writ of error and filed the same together with a
13 copy thereof in the office of the clerk of said court, to remove the record and proceedings in said suit into the Supreme Court of the United States, and said Orlando B. Dickinson having also obtained and served a citation directed to the said obligees, citing and admonishing them to appear at a Supreme Court of the United States, to be holden at Washington on the 2nd Monday of October next, 1877:

Now, the condition of the above obligation is such that if the said Orlando B. Dickinson shall prosecute his said writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

ORLANDO B. DICKINSON. [L. S.]
OBADIAH JACKSON. [L. S.]
WILSON AMES. [L. S.]

Signed, sealed, and delivered in presence of—
NORMAN HULL.
C. A. HOYNE.

Approved.

S. L. WITHEY,
Dis't Judge.

UNITED STATES OF AMERICA,
Northern Dis't Illinois:

I, Philip A. Hoyne, a commissioner of the circuit court of the United States, do hereby certify that the above-named obligors named as sureties are personally known to me, and I believe them to be perfectly good and responsible for the full sum of three hundred dollars mentioned in said bond.

Witness my hand and seal at Chicago, Illinois, this first day of December, A. D. 1876.

[SEAL.] PHILIP A. HOYNE,
U. S. Commissioner Northern District of Illinois.

(Indorsed:) U. S. circuit court, western district of Michigan. Orlando B. Dickinson vs. Sterne Bronson et al. Bond to accompany writ of error. Filed Dec. 20, '76. Chester B. Hinsdill, clerk.

14 UNITED STATES OF AMERICA:

The circuit court of the United States for the sixth circuit and western district of Michigan.

Orlando B. Dickinson and William W. Wheeler, of the city of Chicago, in the State of Illinois, and who are citizens of the State of Illi-

nois, by Edward Bacon, their attorney, come into this court according to the form of the statute authorizing the commencing of suits by declaration, and complain in a plea of ejectment of Calvin Colgrove, William H. Cirby, Cushan Burr, Allen Bronson, Edward Bremel, Elihu Renolds, Benjamin Rounds, Maria T. Edwards, James G. Portman, John Morrison, George Rice, Thomas Spiers, Martin G. Lamport, Almond B. Riford, Charles Petrie, John C. Gates, John Bell, Wallace W. Carpenter, Nathaniel Robins, Sterne Bronson, Edward Palmer, John Brown, James Fonger, Thomas Walker, Harvey C. Jennings, Rufus Bronson, Horace Bronson, Henry C. Morton, Samuel McGuigan, Washington C. Hunter, George K. Hopkins, Sarah Adams, Levi Fowler, Guy Johnson, Michael McKinney, William J. Hess, Albert H. Crowell, Jacob Burrage, Nancy Antisdale, Andrew Shonow, James M. Sorter, Jeremiah Silvers, Henry Kidd, Sarah Vanhorn, Mary Hageman, George Shineman, Albert B. Nolan, Dudley Montgomery, Elihu Skilling, Charles Courtway, James Slasen, Silas Morton, Seth Riford, Henry Williams, Mary Diman, John C. Ingham, Alfred Graham, Thomas Moodi, George Bryant, Robert Rickerby, David Brown, and Alamanzo Haleman, who are citizens of the State of Michigan and of the western district of Michigan.

For that the said plaintiffs heretofore, to wit, on the tenth day of February, in the year one thousand eight hundred and seventy-three, were possessed of the following real estate and premises, situated in the county of Berrien, in said western district of Michigan, and being heretofore known and designated as the fractional west half of the northwest quarter of section nineteen, in town. four south of range eighteen west, containing seventy-seven acres of land.

Also further, all those lots, pieces of land, and real estate in that part of the village of Benton Harbor, formerly called Bronson Harbor, in said county, commonly called the Original Plat of said village, a map thereof appearing of record in the office of the register of deeds of said county, known as follows, to wit:

Lots 1, 2, and 3, in block 16.

Lots 1, 2, 3, 4, 5, 9, 10, 11, 12, 13, 14, 15 and 16 in block 23.

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 in block 24.

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 in block 25.

Lots 1, 2, 3, 4, 5, 6 and 7 in block 27.

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 in block 28.

Also further, those lots, pieces of land, and real estate, commonly called Sterne Bronson's addition to the village of Benton Harbor.

Also further, lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14, in said addition, so called.

Also further, all those lots, pieces of land, and real estate, commonly called Ingham and Bowman's addition to the village of Benton Harbor.

Also, lots 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10 in each of the following named blocks in said addition, respectively as follows, to wit, block B, block C, block D, block E, block F.

Also, lots 1, 2, 3, 4, 5, 6, 7 and 8, in block A, all in said addition, so-called.

Also further, all the equal undivided half of each and every respective lot, tract, piece and parcel of land and real estate aforesaid, and the equal undivided half of all the real estate hereinbefore mentioned.

And said plaintiffs aver that said real estate collectively is of great value, to wit, of the value of two hundred thousand dollars, and that each and every lot, tract, and piece of land aforesaid, separately, and the undivided half of each and every such lot, tract, and piece of real

estate hereinbefore mentioned, is of great value, to wit, of the value of two hundred thousand dollars.

And the said plaintiffs aver that they claim all the aforesaid premises and real estate and every part thereof in fee simple, and that the said plaintiffs being so as aforesaid possessed thereof, the said defendants, afterwards, to wit, on the twentieth day of February, in the last mentioned year, entered into said premises and ejected said plaintiffs therefrom, and unjustly with'old from said plaintiffs the possession thereof to the damage of said plaintiffs of two hundred thousand dollars, and therefore they bring this suit.

EDWARD BACON.
EDWARD BACON,
Plaintiffs' Attorney.

15 (Indorsed:) United States of America. The circuit court of the United States for the sixth circuit and western district of Michigan. Orlando B. Dickinson and William W. Wheeler vs. Sterne Bronson et al. Copy of declaration.

To the within named defendants:

Take notice, that on filing the declaration in this cause (of which the within is a copy) a rule was entered in the book of common rules, kept by the clerk of this court, at his office in Grand Rapids, in said district, requiring the defendants within named to plead to said declaration within twenty days after service of a copy thereof and notice of said rule or judgment, &c.

Dated at Niles, Mich., this day of March, A. D. 1873.

Yours, &c.,

EDWARD BACON,
Plaintiffs' Attorney.

Filed March 6th, 1873.

ISAAC H. PARRISH, *Clerk.*

Let this declaration be served by Nelson H. Terry.

S. L. WITHEY,
U. S. Dist. Judge.

I, Edward Bacon, acknowledge myself security for all costs for which the plaintiffs or either of them may be liable in this suit.

EDWARD BACON.

16 October term, March 6th.

ORLANDO DICKINSON & WILLIAM WHEELER
vs.
STERNE BRONSON ET AL.

On reading & filing the declaration of suit in this cause, & on motion of Edward Bacon, att'y for plaintiffs, ordered, that the defendants appear & plead to said declaration within twenty days after personal service thereof, together with notice of this rule or judgment.

EDWARD BACON,
Pl'ffs' Att'y.

17 UNITED STATES OF AMERICA:

The circuit court of the United States for the sixth circuit and western district of Michigan.

ORLANDO B. DICKINSON AND WILLIAM H. Wheeler
vs.
CALVIN COLGROVE, WILLIAM H. KIRBY, CUSHAN Burr, Allen Bronson, Edward Bremal, Elihu Reynolds, Benjamin Rounds, Maria T. Edwards, James G. Portman, John Morrison, George Rice, Thomas Spiers, Martin G. Lamport, Almond B. Riford, Charles Petrie, John C. Gates, John Bell, Wallace W. Carpenter, Nathaniel Robbins, Sterne Bronson, Edward Palmer, John Brown, James Fonger, Thomas Walker, Harvey C. Jennings, Rufus Bronson, Horace Bronson, Henry C. Morton, Samuel McGuigan, Washington C. Hunter, George K. Hopkins, Sarah Adams, Levi Fowler, Guy Johnson, Michael McKinney, William J. Hess, Albert H. Crowell, Jacob Burrage, Nancy Antisdell, Andrew Shonow, James M. Sorter, Jeremiah Silvers, Henry Kidd, Sarah Van Horn, Mary Hagerman, George Shinneman, Albert B. Nolan, Dudley Montgomery, Elihu Skilling, Charles Courtway, James Slasen, Silas
18 Morton, Seth Riford, Henry Williams, Mary Diman, John C. Ingham, Alfred Graham, Thomas Moodi, George Bryant, Robert Rickerby, David Brown, and Alamanzo Haleman.

And now comes the said defendants, by Hughes, O'Brien & Smiley, their attorneys, and demand a trial of the matters and things set forth in the plaintiffs' declaration.

HUGHES, O'BRIEN & SMILEY,
Attorneys for Defendants.

(Indorsed:) The circuit court of the United States, western district of Michigan. Orlando B. Dickinson et al. vs. Calvin Colgrove et al. Plea. Filed March 27, 1873. Isaac H. Parrish, clerk. Hughes, O'Brien & Smiley, def'ts' att'ys.

19 UNITED STATES OF AMERICA:

The circuit court of the United States for the sixth circuit and western district of Michigan.

ORLANDO B. DICKINSON AND BAC N WHEELER, administrator of the estate of William Wheeler, deceased, pl'ffs,

vs.

CALVIN COLGROVE, WILLIAM H. CIRBY, CUSHAN Burr, Allen Bronson, Edward Bremel, Elihu Renolds, Benjamin Rounds, Maria T. Edwards, James G. Portman, John Morrison, George Rice, Thomas Spiers, Martin G. Lamport, Almond B. Riford, Charles Petrie, John C. Gates, John Bell, Wallace W. Carpenter, Nathaniel Robins, Sterne Bronson, Edward Palmer, John Brown, James Fonger, Thomas Walker, Harvey C. Jennings, Rufus Bronson, Horace Bronson, Henry C. Morton, Samuel McGuigan, Washington C. Hunter, George K. Hopkins, Sarah Adams, Levi Fowler, Guy Johnson, Michael McKinney, William J. Hess, Albert H. Crowell, Jacob Burrage, Nancy Antisdell, Andrew Shonow, James M. Sorter, Jeremiah Silvers, Henry Kidd, Sarah Van Horn, Mary Hageman, George Shinneman, Albert B. Nolan, Dudley Montgomery, Elihu Skilling, Charles Courtway, James Slasen, Silas Morton, Seth Riford, Henry Williams, Mary Dimon, John C. Ingham, Alfred Graham, Thomas Moodi, George Bryant, Robert Rickerby, David Brown, and Alamanzo Haleman, defendants.

20 It is hereby stipulated and agreed by and between the parties to this cause, by their respective attorneys, that a jury is hereby waived on the trial thereof, and that the same may be tried and determined by the court without the intervention of a jury.

It is further agreed that said cause shall not be called for trial before the first day of December, 1874.

This stipulation, waiving a jury and providing for the trial and determination of this cause without a jury, is only to apply to the first trial thereof. Should either party obtain a new trial or trials, his rights in respect to such new trial or trials shall be the same as if this stipulation had not been made.

Nov. 18th, 1874.

HUGHES, O'BRIEN & SMILEY,
Attys' for Defendants.

EDWARD BACON,
Att'y for Plaintiff'.

(Indorsed:) U. S. circuit court for west. dist. of Mich. Orlando Dickinson et al. vs. Sterne Bronson et al. Stipulation waiving jury. Rec'd & filed November 18th, 1874. Isaac H. Parrish, clerk.

21 UNITED STATES OF AMERICA:

The circuit court of the United States for the sixth circuit and western district of Michigan.

ORLANDO B. DICKINSON AND WILLIAM W. Wheeler
vs.
STERNE BRONSON AND MANY OTHERS.
} Action of ejectment.

To Hughes, O'Brien & Smiley, attorneys for the above-named defendants.

GENTLEMEN: Please take notice that on the 14th day of February, inst., A. D. 1874, at 10 o'clock in the forenoon of said day, or as soon thereafter as counsel can be heard at the United States court-rooms in the city of Grand Rapids, in said district, I shall, on due suggestion and showing, apply to said court (the Hon. Solomon L. Withey, presiding) to substitute the name of Bacon Wheeler, of the city of Chicago, county of Cook, and State of Illinois, in the place of that of William W. Wheeler, one of the plaintiffs aforesaid, on the record and proceedings in this case, according to usual practice; and in support of such application I shall present to the court and judge duly certified copies of the probate proceedings whereby said Bacon Wheeler was appointed administrator of said William W. Wheeler, showing the death of said William
22 W. Wheeler, on or about August 29th, 1873, and the issuing of proper letters of administration to said Bacon Wheeler on or about January 6th, 1874, all of which copies are now duly on file with the clerk of this court.

Dated February 13th, A. D. 1874.

EDWARD BACON,
Plaintiffs' Attorney.

(Indorsed:) United States of America. The circuit court of the United States for the 6th circuit and western district of Michigan. Orlando B. Dickinson and William W. Wheeler vs. Sterne Bronson and many others. Action of ejectment.

WESTERN DISTRICT OF MICHIGAN,
County of Kent, ss:

Edward Bacon, of Niles, in said district, being first duly sworn, says that on the 13th day of February, A. D. 1874, at between 2 & 3 o'clock p. m. of said day, at the law office of Hughes, O'Brien & Smiley, in the city of Grand Rapids, in said district, he did personally deliver to Smiley, of said firm, a duplicate of the within notice, said Hughes, O'Brien & Smiley being the attorneys for the defendants in the above and within mentioned case.

EDWARD BACON.

Subscribed and sworn to before me this 13th day of February, A. D. 1874.

ISAAC H. PARRISH, *Clerk.*

Filed Feb. 14th, 1874.

ISAAC H. PARRISH, *Clerk.*

23 UNITED STATES OF AMERICA:

STATE OF ILLINOIS,
Cook County, ss:

I, Hermann Lieb, clerk of the county court of Cook County, in the State aforesaid, do hereby certify that the annexed and within is a true and correct copy of the order approving the bond and granting of letters of administration, and of the letters of administration issued to Bacon Wheeler, on the 6th day of January, A. D. 1874, in the estate of William W. Wheeler, deceased, as appears from the records and files of my office.

In witness whereof I have hereunto set my hand and affixed the seal of the county court of Cook County, at Chicago, in said county, this sixteenth day of January, A. D. 1874.

[L. S.] HERMANN LIEB, *Clerk.*

STATE OF ILLINOIS,
County of Cook, ss:

I, M. R. M. Wallace, county judge of Cook County, and sole president judge of the county court of Cook County, in the State of Illinois, do hereby certify that Hermann Lieb, esq., whose name is subscribed to the foregoing certificate of attestation, now is, and was at the time of signing and sealing the same, the clerk of the county court of
24 Cook County, aforesaid, and keeper of the records and seal thereof, duly elected and qualified to office, and that full faith and credit are, and of right ought to be given to all his official acts as such in all courts of record and elsewhere, and that his said attestation is in due form of law, and by the proper officer.

Given under my hand and seal, at my chambers in Chicago, this sixteenth day of January, A. D. 1874.

M. R. M. WALLACE, [SEAL.]
County Judge.

25 UNITED STATES OF AMERICA:

STATE OF ILLINOIS,
County of Cook, ss:

County court of Cook County, December term, A. D. 1873, the sixth day of January, A. D. 1874.

Court being in session. Present, Hon. Martin R. M. Wallace, judge of the county court of Cook County; Timothy M. Bradley, sheriff of Cook County.

Attest:

HERMANN LIEB,
Clerk of the County Court of Cook County.

Grant of administration.

In the matter of the estate of William W. Wheeler, deceased.

On reading and filing the petition, duly verified, of Bacon Wheeler, of the county of Cook, in the State of Illinois, from which it appears to the court that William W. Wheeler, of Chicago, in said county, died intestate on or about the twenty-ninth day of August, A. D. 1873, leaving property and effects in said county, the value of which does not exceed the sum of three hundred and fifty dollars; that the petitioner is

the father of said decedent, and prays that he may be appointed to administer upon said estate. And it appearing to the court that all allegations of said petition are true; on motion, it is ordered that the said Bacon Wheeler be appointed administrator of the estate of the said
William W. Wheeler, deceased, upon filing his bond as such ad-
26 ministrator in the penal sum of seven hundred dollars, with good and sufficient surety, conditioned as the law directs.

Whereupon said Bacon Wheeler presents his said bond, duly executed, with Tolman Wheeler as his surety, and takes and subscribes the oath of office as such administrator. And the court having examined said sureties, and being satisfied of their responsibility, it is ordered that said bond be received and approved and that letters of administration be issued accordingly.

And it is further ordered that Seth F. Hanchett, C. B. Myer, and E. M. Teal be appointed to appraise the personal estate of said decendent subject to appraisement, and that a warrant be issued to them therefor.

27 *Letters of administration.*

County court of Cook County.

STATE OF ILLINOIS,
Cook County, ss:

The people of the State of Illinois, to all to whom these presents shall come, greeting:

Know ye that whereas William W. Wheeler, of the County of Cook, and State of Illinois, died intestate, as it is said, on or about the 29th day of August, A. D. 1873, leaving at the time of his decease personal property in this State, which may be lost, destroyed or diminished in value if speedy care be not taken of the same; to the end therefore that said property may be collected and preserved for those who shall appear to have a legal right or interest therein, we do hereby appoint Bacon Wheeler, of the county of Cook, and State of Illinois, administrator of all and singular the goods and chattels, rights and credits, which were of the said William W. Wheeler at the time of his decease, with full power and authority to secure and collect the said property and debts, wheresoever the same may be found in this State, and in general to do and perform all other acts which now are, or hereafter may be required of him by law.

Witness Hermann Lieb, clerk of the county court of Cook County, and the seal of said court, at Chicago, in said county, this 6th day of January, A. D. 1874.

[L. S.] H. LIEB, *Clerk.*

28 (Indorsed:) County court of Cook County. Estate of W. W. Wheeler, deceased. Letters of administration. Filed Feb. 13, 1874. Isaac H. Parrish, clerk.

(Indorsed:) United States of America. The circuit court of the United states for the sixth circuit and western district of Michigan. Action of ejectment. Orlando B. Dickinson and William W. Wheeler vs. Sterne Bronson and many others. Copies of probate proceedings to be used on suggestion to substitute Bacon Wheeler's name in place of Wm. W. Wheeler, deceased. Filed Feb. 13, 1874. Isaac H. Parrish, clerk.

29 UNITED STATES OF AMERICA:

The circuit court of the United States for the sixth circuit and western district of Michigan.

ORLANDO B. DICKINSON AND BACON WHEELER, administrator of the estate of William W. Wheeler, deceased, and substituted on the record in place of said William W. Wheeler, originally one of the plaintiffs in this suit,

vs.

STERNE BRONSON AND OTHERS.

To the circuit court aforesaid. Western district of Michigan, county of Kent, ss:

The petition of the aforesaid Bacon Wheeler respectfully showeth That the aforesaid William W. Wheeler, originally one of the plaintiffs in this suit, died in Chicago, in the county of Cook, in the State of Illinois, on the last Friday of August, A. D. 1873, leaving a widow, Mary E. Wheeler, and an infant daughter named also Mary E. Wheeler, being then about three years old and the only heir at law of said William W. Wheeler; also, that a letter of administration on the estate of said William was issued to your petitioner in said county of Cook, your petitioner being the father of said William W. Wheeler, and that afterwards, and within three months last past, another letter of ad-
30 ministration on the estate of said William W. Wheeler has been issued to your petitioner by the probate court for the county of Berrien, in the State of Michigan, ready to be produced and to which your petitioner begs leave to refer.

Also, that doubts have arisen concerning the legality of the order heretofore made substituting your petitioner as administrator as aforesaid in the place of said William W. Wheeler in this cause, your petitioner then having no letter of administration except the first one aforesaid, being that issued in said State of Illinois, and that now your orator having said second letter of administration issued in the State of Michigan, and being desirous to remove the doubts aforesaid, prays that another order of substitution may be made substituting him as administrator as aforesaid in the place of said William W. Wheeler in this case, and that such order of substitution as the circumstances may require may be made in the case.

BACON WHEELER.

EDWARD BACON,
Attorney for Petitioner and all plaintiffs in the above entitled cause.

31 WESTERN DISTRICT OF MICHIGAN,
County of Kent, ss:

On this fifth day of January, 1875, before me, a notary public in and for said county, personally appeared Bacon Wheeler, who being by me first duly sworn, says that he has heard read the foregoing petition by him subscribed, and knows the contents thereof, and that the same is true in substance and matter of fact.

HORACE TOMPKINS,
Notary Public, Kent County, Mich.

(Indorsed:) United States of America. The circuit court of the United States for the 6th circuit and western district of Michigan. Orlando B. Dickinson and Bacon Wheeler, administrator of the estate of William W. Wheeler, substituted on the record in place of W. W. Wheeler, deceased, vs. Stern Bronson et al. Petition for a reforming order of substitution. Filed January 5, 1875. Isaac H. Parrish, clerk. Edward Bacon, plff's att'y.

32 UNITED STATES OF AMERICA:

The circuit court of the United States for the western district of Michigan.

ORLANDO B. DICKINSON
vs.
STERNE BRONSON ET AL. } Ejectment.

In this cause, in addition to the facts agreed upon, it is further agreed for the purposes of this trial only, and not for any other, that after the letter written by Edmund Chauncey, dated April 1st, 1866, came to the knowledge of Lowell Morton, he deeded *deeded* various pieces of the land in question to various persons under whom through mesne conveyances the defendants did at the commencement of this ejectment suit claim and possess jointly the premises in question. That all the deeds were warrantee deeds; that the defendants and those under whom they claim have since the conveyances by Lowell Morton occupied and improved said premises: also, that in Feb., 1853, Micajah Chauncey died intestate, leaving Edmund Chauncey and Sarah Jane Kline his only children and heirs at law; that Edmund Chauncey was then a citizen of the State of California; that he returned to *to* Berrien County, Michi-
gan, shortly before the date of his deed to the plaintiff and Jane
33 N. Witherell, a certified copy of which is in evidence; also that the plaintiff and said Witherell did, in Dec., 1865, in Berrien circuit court in chancery, commence a suit against parties through whom the defendants in the present ejectment suit claim title; that the object of the chancery suit is stated in a copy of a lis pendens notice, which was recorded, as appears by the certificate of the register of deeds of said county and with said copy hereto annexed; that in the chancery suit such proceedings were had as are indicated by the annexed certified copy from the chancery calender of said Berrien circuit court.

Dated June 26th, 1875.

EDWARD BACON,
Attorney for Plaintiff'.
HUGHES, O'BRIEN & SMILEY,
Def'ts' Att'ys.

34 The circuit court for the county of Berrien. In chancery.

ORLANDO B. DICKINSON & JAMES N. WITHERELL, compl'ts,
vs.
SARAH JANE KLINE, JOHN KLINE, STERNE BRONSON, and others, def'ts.

Notice is hereby given that a suit has been commenced in the circuit court for the county of Berrien, in chancery, by the above-named com-

plainants, against the above-named defendants and others, for the purpose of redeeming a certain mortgage bearing date the 29th day of March, 1848, executed by Micajah Chauncey, then of the township of Benton, Berrien County, Michigan, to Mrs. Ann L. Preston, and recorded in the office of the register of deeds for said county of Berrien, in book D of mortgages, on pages 487 & 488, and afterward assigned by the said Ann L. Preston to one John Kline, which assignment was recorded at the office of said register of deeds in book F of mortgages, on pages 301 & 302, and was afterward pretended to be foreclosed under the statute by advertisement, and that the mortgaged premises to be effected by said suit and at the time of filing this notice situated in the county of Berrien, State of Michigan, and described in said mortgage as follows, to wit: The fractional west half of the northwest quarter of section nineteen, in township four south of range eighteen west,
35 containing seventy-six acres, more or less, excepting therefrom two rods in width the whole length of the west side, and reserving a small piece of land two rods square on a rise of ground sometimes called the Turtle's Back, where two children of Thomas Conger and wife were buried, a small oak tree standing on said piece of land, being the center of the last reservation in Berrien County, Michigan.

Dated December 26th, 1865.

D. A. WINSLOW,
Sol'r for Co'pl'ts.

Recorded Dec. 26th, A. D. 1865, at 3 hours p. m.

R. D. DIX, *Register.*

STATE OF MICHIGAN,
Berrien County, ss:

I, Frank N. Dix, register of deeds in and for said county, do hereby certify that the above and foregoing is a full, true, and perfect copy of the original record of conveyance as recorded in book 1 of lis pendens, on page 296, in the register's office of said county; that the same has been compared by me with the original record thereof, and is a correct transcript therefrom and the whole of such original record.

In witness whereof I have hereunto set my hand and official seal this 6th day of June, 1872.

[SEAL.]

FRANK N. DIX,
Register of Deeds.

[F. N. D., June 6, '72. 5.]

36 ORLANDO B. DICKINSON AND JAMES N. Witherell, complainants,
vs.
JOHN KLINE, SARAH J. KLINE, STERNE BRONSON, Allen Bronson, Lucius A. Willard, et al., defendants.

D. A. Winslow
1865.
Dec. 26. Filed bill of complaint.
" " Entered order for a subpœna.
" " Issued subpœna.
1866.
Jan. 29. Filed return of subpœna.
Feb. 17. Issued alias subpœna.
Aug. 9. Filed affidavit of publication.

1869.
April 13. Issued pluries subpœna (30 June).
July 14. Filed sub. ret'd with service on part of def'ts.
" " " alias sub., no service.
1871.
M'ch 1. Filed stipulation for order overruling demurrer.
May 19. " order overruling demurrer.

STATE OF MICHIGAN,
County of Berrien, ss:

I, David E. Hinman, register of the circuit court for the county of Berrien, in chancery, do hereby certify that the above and foregoing is a true and correct copy of all entries made on the chancery calendar entered in the above-entitled cause in said court, as appears of record in my office; that I have compared the same with the original, and it is a true transcript therefrom and of the whole thereof.

37 In testimony whereof I have hereunto set my hand and affixed the seal of said court at Berrien Springs this 26th day of June, A. D. 1875.

[SEAL.] DAVID E. HINMAN,
Register in Chancery.

(Indorsed:) United States of America. The circuit court of the United States for the sixth circuit and western district of Michigan. Orlando B. Dickinson vs. Sterne Bronson et al. Stipulation admitting additional facts and signed by attorneys on both sides. Filed June 26th, 1875. Isaac H. Parrish, clerk.

38 The circuit court of the United States, western district of Michigan. October term, 1874.

ORLANDO B. DICKINSON, SURVIVING PLAINTIFF,
vs.
STERNE BRONSON AND SIXTY OTHER DEFENDANTS. } Ejectment.

Edward Bacon, pl'ff's att'y.
Hughes, O'Brien & Smiley, def'ts' att'ys.

FINDING BY THE COURT.

This cause was tried by the court, a jury having been waived in writing.

The declaration is for the fractional west half of the northwest quarter of section nineteen in town. four south of range eighteen west, seventy-seven acres of land, situated in Berrien County, in the State and western district of Michigan; also for 129 village lots in the village of Benton Harbor, being the same land first above described.

Plaintiff claims, as surviving tenant in common, to recover an undivided one-fourth of the land in question.

FACTS FOUND.

First. On the 29th March, 1848, Micajah Chauncy owned the land in question, except two rods in width off the west side thereof.

39 On the 29th day of March, 1849, said Chauncey mortgaged said land to Ann L. Preston to secure said Chauncey's note to the mortgagee.

Second. Micajah Chauncy died on the day of February, 1853, leaving two children surviving him, Edmund Chauncy and Sarah Kline, the only heirs at law of said deceased.

Third. Micajah Chauncy is the common source from whom all the parties claim to have derived title.

Fourth. Ann L. Preston assigned and transferred August 15, 1853, to John Kline, the husband of Sarah Kline, the mortgage and note given by Micajah Chauncy to said Ann L. Preston.

Fifth. John Kline and Sarah Kline conveyed by warranty deed March 3d, 1854, to Lowell Morton, the entire land described in plaintiff's declaration, except the two rods aforesaid off the west side thereof, which deed was duly recorded March 6th, 1854, and said Lowell Morton entered into actual possession of said land April first, 1854, and that he, and succeeding him the defendant, have been in possession, claiming title to said land as tenants in common ever since; and defendants were in possession at the time of the commencement of this suit, claim-
40 ing title through conveyances from Lowell Morton. The deed of John and Sarah Kline to Lowell Morton recited that they were the heirs at law of Micajah Chauncy.

Sixth. Prior to April first, 1856, Lowell Morton learned that Edward Chauncy was one of the children and heirs at law of Micajah Chauncy, deceased, and that said Edmund resided in California. Whereupon said Lowell Morton procured one Eleazer Morton to address a letter to Edmund Chauncy, the object and purpose of which was to ascertain whether said Edmund Chauncy made any claim to the land in question. April first, 1856, Edmund Chauncy in California wrote to his sister, Sarah Kline, in Michigan, upon the subject matter covered by Eleazer Morton's said letter, in which letter to Sarah Kline said Edmund Chauncy says: "Mr. Morton wrote me a letter; he wanted to know if I intended to claim any of the Conger farm" (the premises in question); "you can tell Mr. Morton for me he need not fear anything from me. Thank God I am well off here, and you can claim all there. This letter will be enough for him. I intended to give you and yours all of my property there, and more if you need it." The contents of this letter some time after its receipt by Sarah Kline came to the knowledge of Lowell Morton, who afterwards conveyed to the defendants by warranty deeds
41 the premises in question. Under which deeds they have since, and do now claim title, and have occupied and improved said lands.

Seventh. John Kline and Sarah Kline, October 22d, 1855, filed a bill in the circuit court of Berrien County, Michigan, against Edmund Chauncy, to foreclose said mortgage which Ann L. Preston had assigned to John Kline, August 15th, 1853. Such proceedings were had in the foreclosure suit that a decree of sale was obtained and the premises sold Jan'y 17, 1859, to Sarah Kline, to whom the officer making the sale executed a conveyance Jan'y 22, 1859.

From the evidence before the court it appears that the circuit court of Berrien County did not acquire jurisdiction of the defendant in said foreclosure suit, he being in California—not served in fact nor constructively. The said decree and sale is therefore without effect, touching the matters in controversy in this suit, if for no other cause.

Eighth. Edmund Chauncy and his wife conveyed by quitclaim deed, dated July 19th, 1865, to Orlando B. Dickinson and James Witherell, the undivided one-half of the said premises. Said Witherell conveyed all his right, title and interest in the premises to William W. Wheeler, one of the original plaintiffs, May 1st, 1868; said Wheeler has died since commencement of this suit.

42 Ninth. This suit was commenced March 6th, 1873, at which time defendant and Morton, their grantor, had been in actual possession, claiming title adversely for eighteen years and eleven months.

CONCLUSIONS.

The statute of Michigan when Lowell Morton took possession of the land, April 1, 1854, limited actions for the recovery of land held adversely to twenty years. (Compiled Laws of Michigan of 1857, sec. 5350 to 5358.)

In 1863 an act was passed, which went into effect January 1st, 1864, limiting such actions to fifteen years, except in a class of cases not material or applicable to this case. (Session Laws of 1863, pp. 388, 389.) This statute by its express provisions was both retrospective and prospective, hence after fifteen years the statute would defeat action by those having a right of action or of entry prior to, as well as subsequent to, the law of 1863 taking effect, except as hereafter noticed.

As the adverse possession in this case commenced April 1, 1854, the right of action would be barred April 1, 1869, unless the effect of that statute would be to deprive plaintiff or those under whom he claims of a reasonable time within which to bring suit. But as the act of 1863, which took effect January 1st, 1864, left five years and over in which plaintiff could have commenced his
43 action before the limitation of fifteen years expired, viz, from January 1st, 1864, to April 1st, 1869, it cannot be said that the statute of 1863 deprived plaintiff of his right of action or reasonable opportunity to assert his claim. When the fifteen years expired, April 1st, 1869, the act of 1863 was still in force, and the opinion of the court is that title of defendants had passed beyond the effect of the subsequent statute passed April 3d, 1869, amending section 9 of the act of 1863, so as to give to it prospective operation only. This statute of 1869 (Sess. Laws 1869, pp. 218, 219) went into effect some time in July, 1869, but prior thereto, viz, April 1, 1869, defendants' title had vested beyond the reach of legislative authority.

Again, the letter of Edmund Chauncy, dated April 1, 1856, to Sarah Kline, written in answer to Eleazer Morton's letter touching said Chauncy's claim to the premises, operates as an estoppel upon Chauncey's claim of title. Chauncey wrote: "Mr. Morton wrote me a letter. He wanted to know if I intended to claim any of the Conger farm" (the premises in question). "You can tell Mr. Morton for me he need not fear anything from me," &c. This coming to Lowell Morton's knowledge, he had a right to rely upon what Chauncey wrote. He did rely on Chauncey's letter, and subsequently conveyed by warranty deed to defendants.

44 The court is of the opinion that it estops Chauncy and those claiming under him.

The plaintiff acquired his claim from Edmund Chauncy's deed, dated July 19th, 1865, while defendants were in possession of the premises, and was bound to take notice of any and every claim of title on the part of the defendants in possession.

Finally, the finding and conclusion of the court is, that defendants do not unlawfully withhold said premises, or any part thereof, from said plaintiff.

Sept. 9th, 1875.

Let judgment be entered accordingly in form.

S. L. WITHEY, *Dist. Judge.*

(Indorsed:) United States circuit court, west. dist. Mich. Orlando B. Dickinson, surviving plaintiff, vs. Sterne Bronson et al. Finding of the court. Filed Sept. 9th, 1875. Isaac H. Parrish, clerk.

45 UNITED STATES OF AMERICA:

In the circuit court of the United States for the sixth judicial circuit and western district of Michigan.

ORLANDO B. DICKINSON, SURVIVING PLAINTIFF,
vs.
STERNE BRONSON ET AL.

Now comes the said plaintiff by Edward Bacon, his attorney, and excepts to each and every conclusion of law embodied in the finding of the honorable Solomon L. Withey, district judge, made in this cause and on file therein.

And he further particularly excepts to so much of said finding as concludes and asserts that the limitation law of the State of Michigan, enacted in 1863 and referred to in said finding, did, by retroactive effect or otherwise, change and shorten the time within which this action might be brought.

And said plaintiff especially excepts to so much of said finding as is as follows: "As the adverse possession of this case commenced April 1st, 1854, the right of action would be barred April 1st, 1869, unless the effect of that statute would be to deprive plaintiff, or those under whom he claims, of a reasonable time within which to bring suit."

46 And said plaintiff also excepts to so much of said finding as is as follows: "When the fifteen years expired, April 1st, 1869, the act of 1863 was still in force, and the opinion of the court is that the title of the defendants had passed beyond the effect of the subsequent statute passed April 3d, 1869, amending section 9 of the act of 1863, so as to give it prospective effect only."

Said plaintiff also excepts especially to so much of said finding as is as follows: "Prior thereto, viz, April 1, 1869, defendants' title had vested beyond the reach of legislative authority."

Said plaintiff also especially excepts to so much of said finding as asserts in substance and effect that the plaintiff's right of action has been barred by any statute of limitations.

Said plaintiff, by his said attorney, excepts particularly to so much of said finding as is as follows: "Again, the letter of Edmund Chauncy, dated April 1, 1856, to Sarah Kline, written in answer to Eleazer Morton's letter touching said Chauncy's claim to the premises, operates as an estoppel upon Chauncey's claim of title."

Said plaintiff also especially excepts to so much of said finding as is as follows: "Chauncy wrote: Mr. Morton wrote me a letter.

47 He wanted to know if I intended to claim any of the Conger farm (the premises in question). You can tell Mr. Morton for me he need not fear anything from me," &c.

This coming to Lowell Morton's knowledge, he had a right to rely upon what Chauncy wrote; he did rely on Chauncy's letter, and subsequently conveyed by warranty deed to the defendants.

The plaintiff also especially excepts to so much of said finding as is as follows: "The court is of the opinion that it estops Chauncy and those claiming under him."

The plaintiff also especially excepts to so much of said finding as concludes and *arrests* substantially that the plaintiff is estopped from maintaining this action.

The plaintiff also excepts to so much of the former decisions of said judge in this case as denied the petition of Bacon Wheeler, on file in this suit, to have the grantee, the heir, or the administrator of William

W. Wheeler, deceased, substituted on the record and in this suit, to act in the place of said William W. Wheeler.

The plaintiff also excepts to so much of the former decisions of the said judge in this case as declared that William W. Wheeler, having since the commencement of this suit conveyed to Bacon Wheeler all the interest and title of said William W. Wheeler in the land in
48 question, and having subsequently died, therefore this suit must abate as to said William W. Wheeler.

The plaintiff also especially excepts to so much of the former decisions of said judge in this case as decided that no person could be substituted to proceed in this action in place of William W. Wheeler, deceased.

The said plaintiff especially excepts to so much of the finding aforesaid as is as follows: "Finally the finding and conclusion of the court is that the defendants do not unlawfully withhold said premises, or any part thereof, from the plaintiff. Let judgment be entered accordingly."

The said plaintiff excepts in this, that the finding of facts by said judge in this case does not support the judgment therein.

Also in this, that according to said finding of facts the plaintiff is entitled to judgment in his favor.

Dated October 19, A. D. 1875.

EDWARD BACON,
Plaintiff's Attorney.

(Indorsed:) United States of America. In the circuit court of the United States for the sixth judicial circuit and western district of Michigan. Orlando B. Dickinson, surviving plaintiff, vs. Sterne Bronson et al. Exceptions to findings of the court. Filed Oct. 19th, 1875. Isaac H. Parrish, clerk. Edward Bacon, plaintiff's attorney.

49 May term, A. D. 1875, Saturday, September 11th.

ORLANDO B. DICKINSON AND WILLIAM W. Wheeler
vs.
CALVIN COLGROVE, WILLIAM H. CIRBY, Cushan Burr, Allen Bronson, Edward Bremel, Elihu Reynolds, Benjamin Rounds, Maria T. Edwards, James G. Portman, John Morrison, George Rice, Thomas Spiers, M. G. Lamport, A. B. Riford, Charles Petrie, J. C. Gates, John Bell, W. W. Carpenter, N. Robins, Sterne Bronson, E. Palmer, John Brown, James Fonger, Thos. Walker, H. C. Jennings, Rufus Bronson, Horace Bronson, Henry C. Morton, Samuel McGuigan, W. C. Hunter, Geo. K. Hopkins, Sarah Adams, Livi Fowler, Guy Johnson, Michael McKinney, W. J. Hess, A. H. Crowell, Jacob Burrage, Nancy Antisdale, Andrew Shonow, J. M. Sorter, Jeremiah Silvers, Henry Kidd, Sarah Vanhorn, Mary Hageman, Geo. Shinneman, A. B. Nolan, D. Montgomery, Elihu Skilling, Charles Courtway, James Slasen, Silas Morton, Seth Riford, Henry Williams, Mary Diman, J. C. Ingham, Alfred Graham, Thomas Moodi, George Bryant, Robert Rickersby, David Brown, and Alamanzo Haleman.

50 This cause having been brought on for trial before the court

without a jury, upon stipulation, and the court having heard the proofs and allegations of the parties and the arguments of counsel, finds that the said defendants did not unlawfully withhold the premises described in the declaration.

It is therefore considered by the court that the said plaintiffs take nothing by their said action, and that the said defendants do recover against the said plaintiffs their costs and charges to be taxed, and that they have execution thereof.

S. L. WITHEY.

51 UNITED STATES OF AMERICA:

The circuit court of the United States for the sixth circuit and western district of Michigan.

ORLANDO B. DICKINSON, SURVIVING PLAINTIFF,
vs.
CALVIN COLGROVE, WILLIAM H. CIRBY, Cushan Burr, Allen Bronson, Edward Bremel, Elihu Renolds, Benjamin Rounds, Maria T. Edwards, James G. Portman, John Morrison, George Rice, Thomas Spiers, Martin G. Lamport, Almond B. Riford, Charles Petrie, John C. Gates, John Bell, Wallace W. Carpenter, Nathaniel Robins, Sterne Bronson, Edward Palmer, John Brown, James Fonger, Thomas Walker, Harvey C. Jennings, Rufus Bronson, Horace Bronson, Henry C. Morton, Samuel McGuigan, Washington C. Hunter, George K. Hopkins, Sarah Adams, Levi Fowler, Guy Johnson, Michael McKinney, William J. Hess, Albert H. Crowell, Jacob Burrage, Nancy Antisdale, Andrew Shonow, James M. Sorter, Jeremiah Silvers, Henry Kidd, Sarah Vanhorn, Mary Hageman, George Shinneman, Albert B. Nolan, Dudley Montgomery, Elihu Skilling, Charles Courtway, James Slasen, Silas Morton, Seth Riford, Henry Williams, Mary Diman, John C. Ingham, Alfred Graham, Thomas Moodi, George Bryant, Robert Rickerby, David Brown, and Alamanzo Haleman.

At a session of said court held at the United States court rooms in the city of Grand Rapids, in said district, before the honorable Solomon L. Withey, district judge, presiding, on the fifth day of January, 1875, the issue joined between the parties in this cause came on to be tried by the court without a jury, the right to trial by jury being waived by stipulation, duly signed and filed, at which day came there as well the said plaintiff as the said defendant, by their respective attorneys, and thereupon the said plaintiff did produce in evidence a proper deed, showing that on the 1st day of July, A. D. 1878, William W. Wheeler, one of the original plaintiffs in this action, did duly convey to Bacon Wheeler, aforesaid, all the right, title, and interest of said Will-
52 iam W. Wheeler of, in, and to all land described in the declaration. And thereupon said counsel for the plaintiff did also pre-

sent to the court the sworn petition of said Bacon Wheeler, a copy of which is as follows:

UNITED STATES OF AMERICA:

The circuit court of the United States for the sixth circuit and western district of Michigan.

ORLANDO B. DICKINSON AND BACON WHEELER, administrator of the estate of William W. Wheeler, deceased, and substituted on the record in place of said William W. Wheeler, originally one of the plaintiffs in this suit,
vs.
STERNE BRONSON AND OTHERS.

To the circuit court aforesaid, western district of Michigan, county of Kent, ss:

The petition of the aforesaid Bacon Wheeler respectfully showeth that the aforesaid William W. Wheeler, originally one of the plaintiffs in this suit, died in Chicago, in the county of Cook and State of Illinois, on the last Friday of August, A. D. 1873, leaving a widow, Mary Wheeler, and an infant daughter, named also Mary E. Wheeler,
53 being then about three years old, and the only heir at law of said William W. Wheeler; also, that a letter of administra' on the estate of said William was issued to your petitioner, in said county of Cook, your petitioner being the father of said William W. Wheeler; and that afterwards, and within three months last past, another letter of administration on the estate of said William W. Wheeler has been issued to your petitioner by the probate court for the county of Berrien, in the State of Michigan, ready to be produced, and to which your petitioners begs leave to refer.

Also, that doubts have arisen concerning the legality of the order heretofore made, substituting your petitioner as administrator as aforesaid in the place of said William W. Wheeler in this case, your petitioner then having no letters of administration except the first one aforesaid, being that issued in said State of Illinois, and that now your orator having said second letter of administration issued in the State of Michigan, and being desirous to remove the doubt aforesaid, prays that another order of substitution may be made substituting him as administrator as aforesaid in the place of said William W. Wheeler
54 in this case, and that such order of substitution as the circumstances may require be made in this case.

BACON WHEELER.

EDWARD BACON,
Attorney for petitioner and all plaintiffs in the above entitle l cause.

The letters of administration mentioned in said petition were produced in court, and after hearing the argument of the counsel for the plaintiff, and of the counsel for the defendants, the court did deny the prayer of said petition, and did adjudge that the suit was abated as to the original plaintiff, William W. Wheeler, and should proceed in the name of Orlando B. Dickinson alone as plaintiff. And to the decision of the court that this suit must abate as to the plaintiff, William W. Wheeler, the said counsel for the plaintiff duly excepted.

And upon the trial of the issue aforesaid, the said counsel for the

plaintiff, to maintain and prove the said issue on his part, gave evidence tending to show that in November, 1834, James Dalton received from the United States a patent for the fractional west half of the northwest quarter of section nineteen, in town four south, range 18 west,
55 containing $75\frac{40}{100}$ acres of land, in the county of Berrien, in the State and western district of Michigan. Also, that through proper mesne conveyances Micajah Chauncey did, in March, 1848, become the owner in fee simple and possessor of all the premises described in the declaration, all of the same being included in the land described in said patent; also, that in February, 1853, said Micajah Chauncey died, leaving Edmund Chauncey and Sarah J. Kline his only children and heirs at law. Also, that said land at the commencement of this suit, March 6th, 1873, exceeded $5,000 in value, and still exceeded said sum in value.

The defendants, by their counsel, thereupon, in open court, admitted that at the commencement of this suit they were jointly in possession of the premises described in the declaration, claiming the same adversely to the plaintiff and denying his title, and thereupon the said plaintiff rested his case.

And the said defendants, to maintain and prove the said issue on their part, gave evidence tending to show that in March, 1848, said Micajah Chauncey mortgaged said land to Ann L. Preston to secure the payment to her of two hundred dollars, with interest at ten per cent.,
56 and that on the 15th day of August, 1853, said Ann L. Preston assigned said mortgage, and the debt it secured, to John Kline, the husband of said Sarah J. Kline. Also, that on the 3rd day of March, 1854, said Sarah J. Kline did jointly with her said husband make, execute, and deliver to Howell Morton a warranty deed for all said land, and containing full covenants, including one that the land was at the date of said deed "free from all incumbrances whatever;" said deed also recited that said John Kline and said Sarah Kline were heirs at law of said Micajah Chauncey, deceased. And thereupon the counsel of the respective parties admitted and agreed in open court that on the first day of April, 1854, said Lowell Morton took possession of said land under said deed, and that under him through mesne conveyances, being warranty deeds, the defendants and those under whom they claim have held possession of and improved the premises, claiming the same adversely to the plaintiff, and that such adverse possession commenced April 1st, 1854. Said counsel for the defendants, further to maintain and prove the said issue on his part, gave evi-
57 dence tending to show that, on the 22nd day of October, 1855, the said Sarah J. Kline, jointly with her husband, said John Kline, filed in the circuit court for the county of Berrien, in the State of Michigan, a bill in chancery to foreclose the said mortgage, making said Edmund Chauncey the only party defendant, and that said Edmund Chauncey, being a citizen of California, never appeared in the suit, and that such proceedings were had in said suit in said State court that the complainants, on the 8th day of September, 1857, took a decree in the usual form for the amount due on the said mortgage, and for a sale of the morgaged premises. Also, that at the sale decreed, which took place on the 17th day of January, 1859, the said Sarah J. Kline, being a bidder, received a circuit court commissioner's deed, dated on said day and duly recorded. But the same evidence showed that the circuit court for the county of Berrien never obtained jurisdiction of the person of said Edmund Chauncey, and it was thereupon admitted and agreed in open court, by the counsel for the respective parties, that from the first day

of April, 1854, to the date of said circuit court commissioner's
58 deed, the aforesaid adverse possession was claimed under the aforesaid deed to said Lowell Morton, and that ever since the date of said circuit court commissioner's deed such adverse possession had been claimed by virtue of said last mentioned deed.

The said counsel for the defendants, further to maintain and prove the said issue on his part, offered in evidence a letter, of which the following is a copy:

59 *Letter of E. D. Chauncey.*

ALDORATO, *April 7th*, 1856.

MY DEAR SISTER: It is with pleasure that I now take this favorable opportunity to write you a few lines, to let you know how we are. We are all well at this time and hope this will find you and John and the babies the same. I have just come from Mr. Dutton; he told me all about matters there, and I am sorry to say that you think my prosperity here will make me forsake you and yours. No; I told Mr. Olds, when he left here, if you wanted to come to this country, to sell all and come. I did intend to come to you, and got as far as San Francisco, and my little ones made me cave. Mr. Morton wrote me a letter. He wanted to know if I intended to claim any of the Conger farm. You can tell Mr. M. for me he need not fear anything for me; thank God, I am well off here, and you can claim all there. This letter will be enough for him. I intended to give you and yours all my property there, and more if you
need. You and J. think I feel hard to you, but no, far from the
60 same; but I do think that J. have made bad use of his money, by paying lawyers and costs, but he knows his own business, I think; but, sister, you could have had, if he had written to me, for I would have given you all and you could save cost; but never mind, I want you to sell all and come to me as soon as you can; tell him he has my best wishes. John, I must confess my feelings was a little hurt, but I forget and forgive you all, and you have my best wishes and my purse if need be. I can look forward now when I shall be happy with my dear brother and sister and their little family, and then we can talk over matters and be happy. I have a piano forte in my house, and it is paid for. When little *little* Katy comes she can play for her uncle and aunt Frank. My Fanny sends her love to you all. I have two little ones, one girl and a boy. Mrs. & Mr. Hall are living with me, and Mr. & Mrs. Thompson and little John Thompson all well. John, I wish you to sell all, for it is my wishes, and I will sign all my right, title and interest to my sister and to you and the children to be divided between you all. If
61 you want any money send *send* to your brother, if you consider you have one. Forget and forgive is my motto.

Yours till death,

E. D. CHAUNCEY.

Sarah, my prospects is better this season than ever before; I have a good crop—500 acres of crops—wheat, barley, beans, &c.

Give my love to all of my friends, and save a good share for John and Sarah.

Truly, till death,

E. D. CHAUNCEY.

Start on the first boat. Do not fail. Come by the way of Panama.

If you cannot come tell me in the next boat. But there is no use of me putting in these few lines. Come, come!

E. D. CHAUNCEY.

62 And the said counsel for the plaintiff admitted that said letter was written, as it purported to be, by said Edmund Chauncey, and that soon after its date its contents were made known to the aforesaid Lowell Morton, but said counsel, on behalf of the plaintiff, objected to said letter's being received in evidence on the ground of irrelevancy and incompetency. The court overruled the objection and received the letter in evidence, to which decision of the court the said counsel for the plaintiff then and there duly excepted; and thereupon the defendant rested his case.

And the said counsel for the plaintiff, further to maintain and prove the said issue on his part, gave evidence tending to show that in 1865 said Edmund Chauncey, returning from California to said county of Berrien, did there duly make, execute, and deliver his deed of bargain and sale, without covenant, purporting to convey, for a valuable consideration, all the aforesaid land to the plaintiff, Dickinson, and one James Wetherell; which deed was duly recorded in the office of the register of deeds, in said county, on the 25th day of August, 1865; also, that on the 26th day of December, 1865, said plaintiff, Orlando B. Dick-
63 inson, and James Witherell did, in the circuit court for said county of Berrien, commence a suit in chancery, still pending, against the persons under whom the defendants claim, the purpose of the suit being to free the land from the aforesaid mortgage; also, that in the same month there was duly filed and recorded in the office of said register of deeds the proper notice of the object of said suit; also, that on the first day of May, 1868, said James Witherell, by quitclaim deed, duly recorded, did convey all his right, title and interest in said land to the aforesaid William W. Wheeler.

Whereupon the issue so joined as aforesaid was submitted to the said court for a decision, and thereupon the said cause was held and continued under advisement by the said court, and no decision was made or rendered therein until afterwards, to wit, on the 9th day of September, 1875, on which day, during the May term of said United States court, the said circuit judge did make and file with the clerk of this court the finding and decision of said court, in writing, as follows:

64 The circuit court of the United States for the western district of Michigan. October term, 1877.

ORLANDO B. DICKINSON, SURVIVING PLAINTIFF, *vs.* STERNE BRONSON AND SIXTY OTHER DEFENDANTS. } Ejectment.

Edward Bacon, plaintiff's attorney.
Hughes, O'Brien and Smiley, def'ts' attorneys.

FINDING BY THE COURT.

This cause was tried by the court, a jury having been waived in writing. The declaration is for the fractional west half of the northwest quarter of section 19, in town four, south of range 18 west, seventy-seven acres of land, situated in Berrien County, in the State and western district of

Michigan; also, for 129 village lots in the village of Benton Harbor, being the same land first above described.

Plaintiff claims as surviving tenant in common to recover an undivided one-fourth of the land in question.

FACTS FOUND.

First. On the 29th of March, 1848, Micajah Chauncey owned
65 the land in question except two rods in width off the west side thereof. On the 29th day of March, 1849, said Chauncey mortgaged said land to Ann L. Preston to secure the said Chauncey's note to the mortgagee.

2nd. Micajah Chauncey died on the day of February, 1853, leaving two children surviving him, Edmund Chauncey and Sarah Kline, the only heirs at law of said deceased.

3rd. Micajah Chauncey is the common source from whom all parties claim to have derived title.

Fourth. Ann L. Preston assigned and transferred, Aug. 15th, 1853, to John Kline, the husband of Sarah Kline, the mortgage and note given by Micajah Chauncey to said Ann L. Preston.

Fifth. John Kline and Sarah Kline conveyed by warranty deed, March 3rd, 1854, to Lowell Morton the entire land described in plaintiff's declaration except the two rods aforesaid off the west side thereof, which deed was duly recorded March 6th, 1854. and said Lowell Morton entered into actual possession of said land April 1st, 1854, and that he, and succeeding him the defendants here, have been in possession, claiming
66 title to said land as tenants in common, ever since; and the defendants were in possession at the time of the commencement of this suit, claiming title through conveyances from Lowell Morton. The deed of John and Sarah Kline to Lowell Morton recited that they were the heirs at law of Micajah Chauncey.

Sixth. Prior to April 1st, 1856, Lowell Morton learned that Edmund Chauncey was one of the children and heirs at law of Micajah Chauncey, deceased, and that said Edmund resided in California. Whereupon said Lowell Morton procured one Eleazer Morton to address a letter to Edmund Chauncey, the object and purpose of which was to ascertain whether said Edmund Chauncey made any claim to the land in question. April 1st, 1856, Edmund Chauncey, in California, wrote to his sister, Sarah Kline, in Michigan, upon the subject-matter covered by Eleazer Morton's said letter, in which letter to Sarah Kline said Edmund Chauncey says: "Mr. Morton wrote me a letter. He wanted to know if I intended to claim any of the Conger farm (the premises in question). You can tell Mr. Morton for me he need not fear anything from me. Thank God, I am well off here, and you can claim all
67 there. This letter will be enough for him. I intended to give you and yours all of my property there and more, if you need." The contents of this letter, some time after its receipt by Sarah Kline, came to the knowledge of Lowell Morton, who afterwards conveyed to the defendants by warranty deeds the premises in question, under which deeds they have since and do now claim title and have occupied and improved said lands.

Seventh. John Kline and Sarah Kline, Oct. 22nd, 1855, filed a bill in the circuit court of Berrien County, Michigan, against Edmund Chauncey, to foreclose said mortgage, which Ann L. Preston had assigned to John Kline August 15th, 1853. Such proceedings were had in the foreclosure suit that a decree of sale was obtained and the premises sold

January 17th, 1859, to Sarah Jane Kline, to whom the officer making the sale executed a conveyance July 22nd, 1859.

From the evidence before the court in appears that the circuit court of Berrien County did not acquire jurisdiction of the defendant in the foreclosure suit, he being in California, not served in fact or constructively.

The said decree and sale is therefore without effect touching the matter in controversy in this suit, if for no other cause.

68 Eighth. Edmund Chauncey and his wife conveyed by quit-claim deed, dated July 19th, 1865, to Orlando B. Dickinson and James Witherell the undivided half of said premises. Said Witherell conveyed all his right, title, and interest in the premises to William W. Wheeler, one of the original plaintiffs, May 1st, 1868. Said Wheeler has died since the commencement of this suit.

Ninth. This suit was commenced March 6th, 1873, at which time the defendants and Morton, their grantor, had been in actual possession, claiming title adversely, for eighteen years and eleven months.

CONCLUSIONS.

The statute of Michigan when Lowell Morton took possession of the land, April 1st, 1854, limited action for the recovery of land held adversely to twenty years. (Compiled Laws of Michigan of 1857, sec. 5350 to 5358.)

In 1863 an act was passed, which went into effect January 1st, 1864, limiting such action to fifteen years except in a class of cases not material or applicable in this case. (Session Laws 1863, p. 388, 389.)

69 This statute by its express provisions was both retrospective and prospective; hence after fifteen years the statute would defeat action by those having a right of action as of entry prior to as well as subsequently to the law of 1868 taking effect except as hereinafter noticed. As the *the* adverse possession in this case commenced April 1st, 1854, the right of action would be barred April 1, 1869, unless the effect of that statute would be to deprive the plaintiff, or those under whom he claims, of a reasonable time within which to bring suit. But as the act of 1863, which took effect January 1st, 1864, left five years and over in which plaintiff could have commenced his action before the limitation of fifteen years expired, viz, from January 1st, 1854, to April 1st, 1869, it cannot be said that the statute of 1863 deprived the plaintiff of his rights of action, or reasonable opportunity to assert his claim. When the fifteen years expired, April 1st, 1869, the act of 1863 was still in force, and the opinion of the court is that the title of the defendants had passed beyond the effect of the subsequent statute passed April

70 3rd, 1869, amending section 9 of the act of 1863, so as to give it prospective operation only.

This statute of 1869 (Sess. Laws, 1869, p. 218, 219) went into effect sometime in July, 1869, but prior thereto, viz, April 1st, 1869, the defendants' title had vested beyond the reach of legislative authority.

Again, the letter of Edmund Chauncey, dated April 1st, 1865, to Sarah Kline, written in answer to Eleazer Morton's letter touching said Chauncey's claim to the premises, operates as an estoppel upon Chauncey's claim of title. Chauncey wrote: "Mr. Morton wrote me a letter. He wanted to know if I intended to claim any of the Conger farm (the premises in question). You can tell Mr. Morton, for me, he need not fear anything from me," &c. This coming to Lowell Morton's knowledge, he had a right to rely upon what Chauncey wrote. He did rely on Chaun-

cey's letter, and subsequently conveyed by warranty deed to the defendant.

The court is of opinion that it estops Chauncey and those claiming under him.

71 The plaintiff acquired his claim from Edmund Chauncey's deed, dated July 19th, 1865, while defendants were in possession of the premises, and was bound to take notice of any and every claim of title on the part of such defendants in possession.

Finally, the finding and conclusion of the court is that defendants do not unlawfully withhold said premises, or any part thereof, from said plaintiff.

Let judgment be entered accordingly in form.

Sept. 9th, 1875.

S. L. WITHEY,
Dist. Judge.

And upon said finding, and in accordance therewith, judgment was entered in favor of the defendant, and thereupon the said court, by proper order during said term, allowed the plaintiff 30 days after September 21, 1875, within which to file exceptions to said finding, and sixty days from said day within which to settle a bill of exceptions, which time has been duly extended hitherto; and afterwards, to wit, on the 19th day of October, 1875, the said plaintiff, Orlando B. Dickinson, did, by his counsel, alleged and duly filed with the clerk of said court exceptions in writing, of which the following is a copy:

72 UNITED STATES OF AMERICA:

In the circuit court of the United States for the sixth judicial district and western district of Michigan.

ORLANDO B. DICKINSON, SURVIVING PLAINTIFF,
vs.
STERNE BRONSON ET AL.

Now comes the said plaintiff, by Edward Bacon, his attorney, and excepts to each and every conclusion of law embodied in the finding of the honorable Solomon L. Withey, district judge, made in this caus', and on file therein. And he further particularly excepts to so much of said finding as concludes and asserts that the limitation law of the State of Michigan, enacted in 1863, and referred to in said finding, did, by retroactive effect or otherwise, change and shorten the time within which this action might be brought. And the said plaintiff especially excepts to so much of said finding as is as follows: "As the adverse possession in this case commenced April 1st, 1854, the right of action would

73 be barred April 1st, 1869, unless the effect of that statute would be to deprive the plaintiff, or those under whom he claims, of a reasonable time within which to bring suit."

And said plaintiff also excepts to so much of said finding as is as follows: "When the fifteen years expired, April 1st, 1869, the act of 1863 was still in force, and the opinion of the court is that the title of the defendants had passed beyond the effect of the subsequent statute passed April 3rd, 1869, amending sec. 9 of the act of 1863, so as to give it prospective effect only."

Said plaintiff also excepts to so much of said find' as is as follows:

"Prior thereto, viz, April 1st, 1869, defendants' title had vested beyond the reach of legislative authority."

Said plaintiff also especially excepts to so much of said finding as asserts in substance and effect that the plaintiff's right of action has been barred by any statute of limitations.

Said plaintiff, by his said attorney, excepts particularly to so much of said finding as is as follows: "Again, the letter of Edmund
74 Chauncey, dated April 1st, 1856, to Sarah Kline, written in answer to Eleazer Morton's letter touching said Chauncey's claim to the premises, operates as an estoppel upon Chauncey's claim of title."

Said plaintiff also especially excepts to so much of said find' as is as follows: "Chauncey wrote, 'Mr. Norton wrote me a letter; he wanted to know if I intended to claim any of the Conger farm, (the premises in question); you can tell Mr. Morton for me he need not fear anything from me,' &c. This coming to Lowell Morton's knowledge he had a right to rely upon what Chauncey wrote. He did rely on Chauncey's letter, and subsequently conveyed by warranty deed to the defendants."

The plaintiff also especially excepts to so much of said find' as is as follows: The court is of opinion that it estops Chauncey and those claiming under him.

The plain' especially excepts to so much of said finding as concludes and asserts substantially that the plaintiff is estopped from maintaining this action.

The plaintiff also excepts to so much of the former decision of said judge in this case as denied the petition of Bacon Wheeler,
75 on file in this suit, to have the grantee, the heir of the administrator of William W. Wheeler, deceased, substituted on the record, and in this suit to act in the place of said William W. Wheeler.

The said plaintiff also excepts to so much of the former decisions of the said judge in this case as declared that William W. Wheeler having since the commencement of this suit conveyed to Bacon Wheeler all the interest and title of said William W. Wheeler in the land in question, and having subsequently died, therefore this suit must abate as to said William W. Wheeler.

The said plaintiff also especially excepts to so much of the former decision of said judge in this case as declared that no person could be substituted to proceed in this action in place of William W. Wheeler, deceased.

The said plaintiff also especially excepts to so much of the finding aforesaid as is as follows: "Finally, the finding and conclusion of the court is that the defendants do not unlawfully withhold said prem-
76 ises, or any part thereof, from the plaintiff. Let judgment be entered accordingly."

The said plaintiff also excepts in this, that the finding of fact by said judge does not support the judgment therein; also in this, that according to said finding of facts the plaintiff is entitled to judgment in his favor.

Dated October 19, A. D. 1875.

EDWARD BACON,
Plaintiff's Attorney.

And because none of said exceptions, so offered and made to the several opinions and decisions of the said circuit court of the United States, do appear upon the record of said trial, therefore, upon the prayer of said plaintiff, Orlando B. Dickinson, by his said counsel, the said circuit

judge hath signed and sealed this bill of exceptions this seventeenth day of August, one thousand eight hundred and seventy-six.

S. L. WITHEY,
Dist. Judge.

77 To Messrs. Hughes, O'Brien, and Smiley, attorneys and counsel for the defendants in the above-mentioned cause:

GENTLEMEN: Please take notice that on the 19th day of November, A. D. 1875, at eleven o'clock in the forenoon of said day, at the United States court-rooms, in the city of Grand Rapids, I shall present to the Hon. Solomon L. Withey, district judge, a bill of exceptions, of which the foregoing is a copy, except that in entitling the cause in the bill of exceptions to be presented to the said judge, the names of all the defendants were inserted; and on such presentation of said bill of exceptions I shall apply to said judge to settle and sign the same in order that the record and proceedings in this case may be removed into the Supreme Court of the United States.

Dated November 12, 1875.

EDWARD BACON,
Attorney for Orlando B. Dickinson, aforesaid Plaintiff.

78 UNITED STATES OF AMERICA,
Western District of Michigan, ss:

Edward Bacon, of Niles, in said district, being first duly sworn, says that on the 12th day of November, at Niles, in said district, he did duly enclose in a proper envelope a copy of the annexed bill of exceptions and attach thereto a duplicate of the annexed notice, and then and there duly direct said envelope to the within-named Hughes, O'Brien, & Smiley, attorneys for the within-named defendants, at their place of residence and business, to wit, Grand Rapids, in said district, and thereupon on said day this deponent did duly put into the post office, at Niles aforesaid, and did duly mail said package with all postage prepaid.

EDWARD BACON.

Subscribed and sworn to before me this 11th day of November, A. D. 1875.

C. JEWETT,
U. S. Com'r, Wester' Dist., Mich.

(Indorsed:) No. 407. United State' of America. The circuit court of the United States for the sixth circuit and western district of Michigan. Orlando B. Dickinson, surviving plaintiff, vs. Sterne Bronson et al. Bill of exceptions. Filed August 17, '76. Charles B. Huestis, clerk.

(Indorsed:) No. 348. Orlando B. Dickerson, survivor, plaintiff in error, vs. Calvin Colgrove et al. W. Michigan C. C. U. S. Filed 24 March, 1877.

UNITED STATES OF AMERICA.

—IN THE—

SUPREME COURT.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SIXTH CIRCUIT AND WESTERN DISTRICT OF MICHIGAN—SOUTHERN DIVISION.

No. 18 on Calendar for October Term, 1879.

ORLANDO B. DICKINSON,
Surviving Plaintiff and Plaintiff in Error.

vs.

CALVIN COLGROVE, et al, Defendants in Error.

BRIEF FOR PLAINTIFF IN ERROR.

GEORGE W. LAWTON,
Attorney for Plaintiff in Error.
EDWARD BACON, Attorney for Plaintiff in the Circuit Court.

NILES, MICH.:
REPUBLICAN BOOK AND JOB PRINT.
1879.

United States of America.

—IN THE—

SUPREME COURT.

ERROR TO THE WESTERN DISTRICT OF MICHIGAN.

ORLANDO B. DICKINSON, Surviving Plaintiff, being *Plaintiff in Error*,
vs.
CALVIN COSGROVE, *et al*, *Defendants in Error.*

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

This is an action of ejectment. The premises described in

the declaration (14) are all included in the fractional west half, of the north-west quarter of section 19, in town 4 south, range 18 west, in the County of Berrien and Western District of the State of Michigan. For which James Dalton received from the United States a patent in 1834. (55).

In 1848, Micajah Chauncey, through proper mesne conveyances was in possession of said premises, and owned the same in fee simple.

In the same year he mortgaged the premises to Ann L. Preston, to secure to her the payment of Two Hundred Dollars with interest at 10 per cent.

In February, 1853, Micajah Chauncey died, leaving Edmund Chauncey and Sarah Jane Kline his only children and heirs at law (55).

August 15th, 1853, Ann L. Preston assigned to John Kline, the husband of Sarah Jane Kline, the said mortgage and the debt it secured (56).

March 3rd, 1854, Sarah Jane Kline joined by her said husband, by general warranty deed conveyed all of the said premises to Lowell Morton. The deed recites, that Sarah Jane Kline and John Kline were the heirs at law of Micajah Chauncey and contains all the usual covenants, including one that the lands conveyed, were at the date of the conveyance "free from all incumbrances whatever." But this deed completely ignores Edmund Chauncey and all his rights. Under this deed, duly recorded, Lowell Morton, on

the 1st day of April, 1854, entered into possession of all the premises, and continued in possession (66).

At the death of Micajah Chauncey, in February, 1853, his son Edmund Chauncey was a citizen of California, and continued to reside there.

October 22nd, 1855, John Kline and Sarah Jane Kline aforesaid, as complainants filed in the Circuit Court for the said County of Berrien, in the State of Michigan, in Chancery, a bill to foreclose the said mortgage and for a sale of the mortgaged land.

The bill named, said Edmund Chauncey as the only defendant (57).

But the Court never acquired any jurisdiction of the defendant (57) (67).

April 7th, 1856, Edmund Chauncey wrote to Sarah Jane Kline the letter printed in the record (59) (66).

Sept. 8th, 1857, a decree in usual form for sale of the mortgaged premises was entered in the foreclosure suit.

Jan. 17th, 1859, the sale mentioned in the decree took place and and all the mortgaged premises were struck off to Sarah Jane Kline as the best bidder, (57); and thereupon the usual Circuit Court Commissioner's deed was made to her, and duly recorded (57) (67).

"Ever since the date of said Circuit Commissioner's deed,

the adverse possession has been claimed by virtue of said last mentioned deed" (58).

The adverse possession which commenced April 1st, 1854, was with claim of title under the deed of Sarah Jane Kline only from said day till the date of the Circuit Court Commissioner's deed in 1859 (57).

The impossible claim that Sarah Jane Kline could in her own right sell the undivided half belonging to her brother was thus naturally abandoned, for the only claim which could appear possible, namely: a claim under the Circuit Court Commissioner's deed given on pretended foreclosure of the mortgage given by Micajah Chauncey.

Some time after the date of the letter of Edmund Chauncey its contents were made known to Lowell Morton, and he afterwards (how long afterwards does not appear,) (67) (32), made conveyances of parcels of the aforesaid premises to various persons under whom the defendants, in this suit at its commencement, claimed, and possessed jointly all the premises described in the declaration. Their claim and possession being adverse to the title of the plaintiff, and in denial thereof (32–55–66).

Whether the deeds of Lowell Morton were made before or after the date of the Circuit Court Commissioner's deed is left to conjecture. He is not one of the defendants. They all claim through conveyances under him. Sarah Jane Kline does not appear to have made any deed after the Circuit Court Commissioner's deed to her; but probably be-

cause of the covenant of warranty in her deed to Lowell Morton, the defendant's adverse possession has ever been with claim of title under the foreclosure proceedings. Edmund Chauncey in 1865 returned from California, to Berrien County, Michigan, and conveyed his undivided half of all the premises in question to the plaintiff, Orlando B. Dickinson, and James Wetherell, which deed was duly recorded.

August 25th, 1865, (62); and December 26th, 1865, these grantees commenced in the Circuit Court, for said county against the persons under whom the defendants claim, a suit in chancery still pending to free the aforesaid premises from all effect of the aforesaid mortgage.

The proper *Lis Pendens* notice being duly filed and recorded December 26th, 1865, (62–63), (33–34–35–36).

May 1st, 1868, James Wetherell conveyed to William W. Wheeler his undivided quarter of the premises aforesaid (63).

This suit was commenced March 6th, 1873, (15–68).

July 1st, 1878, William W. Wheeler conveyed to Bacon Wheeler his father, all his aforesaid right and title (51–52) and afterwards, and before the trial in this suit, said William W. Wheeler died (68–52).

Bacon Wheeler made repeated efforts in vain to have the proper person substituted by the Court on the record to proceed in place of said William W. Wheeler in this suit (21–28), 52 to 55). The Court decided that the suit, as to William W. Wheeler was abated and should proceed with Or-

lando B. Dickinson alone as plaintiff (54), to which decision exception was duly taken; but no judgment of abatement was ever entered and the record outside of the bill of exceptions shows nothing of the decision, although the Court in the finding (64) speaks of Orlando B. Dickinson as surviving plaintiff.

The judgment (49) makes William W. Wheeler a party to the record.

The title to the undivided half of the premises which passed by the deed of Sarah Jane Kline to Lowell Morton is not involved in this suit.

ARGUMENT.

The evidence (55–64) and the finding by the Court (65 to 68) establish beyond dispute on the part of the plaintiff:

Perfect legal title;

Perfect legal right to recover in this action.

Two questions have been presented on behalf of the defendants, namely:

First—Is the plaintiff's right to recover barred by any statute of limitations?

Second—Is the plaintiff estopped in this action from asserting his right to recover?

The question concerning the statutes of limitation of the State of Michigan involves the chapter entitled "Of the limitation of actions relating to Real Property," Compiled Laws of Michigan of 1857, chapter 164, being chapter 139 of the Revised Statutes of 1846, unamended Compiled Laws of Michigan, of 1871, chapter 228.

There has been no dispute that the period of limitation fixed by the statutes applicable to the plaintiff's cause of action was twenty years up to January 1st, 1864.

(Compiled Laws 1857, section 5330,) (Compiled Laws 1871, sec. 7137). There has been no claim that the twenty years had expired at the commencement of the suit; or that the plaintiff's right of action is barred by any statute in force prior to January 1st, 1864.

It was stipulated (56) by the parties (56) and found by the Court (65) that the adverse possession commenced April 1st, 1854, and that the suit was commenced (68) (15) March 6th, 1873.

The defendants, by their counsel, have claimed that the plaintiff's right of action is barred because sec. 7137, Compiled Laws of 1871, which took effect Jan. 1st, 1864, cut down the period of limitation from twenty years to fifteen years.

The District Judge, as a conclusion of law, (69) (70) has fully affirmed this claim of the defendants as to the change to fifteen years, and he finds that sec. 7137 aforesaid is as retroactive as the defendants can desire. The statute of 1869, to which the judge refers (70) is now section 7145, Michigan Compiled Laws of 1871.

The judge does not seem to have considered the decision of the Supreme Court of Michigan, "Ludwig vs. Stewart, 32 Mich. Reports, page 27," in which these statutes are construed and section 7137 aforesaid, making the change to fifteen years, is declared not to be retroactive, and that the prior statutes fixing the limitation at twenty years govern

all causes of action which accrued while such statutes were in force.

This decision has been fully affirmed. Parsons vs. Wayne Circuit Judge, 37 Mich. Reports, 389–390, when the Court declares in effect that the Law of Michigan gave this plaintiff twenty years wherein to bring this suit, and as this period had not expired at the commencement of this suit all questions raised under the statutes of limitations are removed from the case.

No question has been raised on behalf of defendants under the first subdivision of section 7137 aforesaid, which in cases of adverse possession under the deeds of ministerial officers on judicial sales, cuts down the period of limitation from the twenty years under the prior statutes to only five years.

It was stipulated (57) (58) that the adverse possession from the date of Circuit Court Commissioner's deed early in 1859 was under this deed.

The five years would expire early in 1864, and there was manifest absurdity in claiming that the law taking effect January 1st, 1864, by retroaction, could so soon cut off plaintiff's cause of action.

The defendants, in their written brief in the Court below, admitted that this statute as to the five years limitation was construed in Miller vs. Babcock, 29 Michigan, 526, to

have no application to cases where the Court ordering the sale had failed to acquire jurisdiction.

It was also admitted in said brief that the Court ordering the sale under which the aforesaid Circuit Court Commissioner's deed was made, never acquired jurisdiction of the defendant, Edmund Chauncey, therein named, and that all the proceedings in said suit, including the deed, were void (57).

The finding of the Court (67–41) is to the same effect.

The case Miller vs. Babcock has recently been examined and affirmed in Toll vs. Wright, 37th Mich., page 100.

It is evident that as the provision of section 7137 shortening the period of limitation to fifteen years, cannot by retroaction cut off the plaintiff's rights. It must be that such rights were unaffected by any provisions of the same section shortening the period to five years.

II.

The record in the present case really raises but one question, namely:

Is the plaintiff estopped in this action from asserting his plain legal rights to recover?

A.

If there is no more than an equitable estoppel it is without effect in this action of ejectment, but there is not even an equitable estoppel here.

Oaksmith's Lessee vs. Johnson, 2 Otto (92 U. S.), 343.
Brant vs. Va. Coal and Iron Co., 3rd Otto (93 U. S.), 327.
Hayes vs. Livingstone, 34th Mich., 384.
Branson vs. Worth, 17th Wall., 41.
Morgan vs. R. R. Co., 96th U. S., 716.
Conrad vs. Long, 33rd Mich., 80.
Walker vs. Walker, 9th Wall., 755.

B.

The alleged estoppel depends upon the letter (59) offered in evidence by the defendants.

Concerning this letter the record contains the following

statement (56): "That on the 3rd day of March, 1854, said Sarah Jane Kline did jointly, with her husband, make, execute and deliver to Lowell Morton a warranty deed for said land, said deed containing full covenants, including one that the land was at the date of said deed 'free from all incumbrances whatever.' Said deed also recited that said John Kline and Sarah Jane Kline were heirs at law of Micajah Chauncey, deceased. And thereupon the counsel for the respective parties admitted and agreed in open court that on the first day of April, 1854, said Lowell Morton took possession of said land under said deed, and that under him through mesne conveyances, being warranty deeds, the defendants and those under whom they claim have held possession of, and improved the premises,claiming the same adversely, and that such adverse possession commenced April 1st, 1854. (The premises are the same described in the declaration (14) (57).) That from the first day of April, 1854, to the date of said Circuit Court Commissioner's deed the aforesaid adverse possession was claimed under the aforesaid deed to said Lowell Morton, and that ever since the date of said Circuit Court Commissioner's deed such adverse possession has been claimed by virtue of said deed. (62) And the said counsel for plaintiff admitted that said letter was written as it purported to be by said Edmund Chauncey. That soon after its date, its contents were made known to the aforesaid Lowell Morton; but said counsel on behalf of the plaintiff objected to said letter being received in evidence, on the ground of irrelevancy and incompetency. The Court overruled the objections and received the letter

in evidence, to which decision of the Court the counsel for the plaintiff then and there duly excepted."

The findings of the Court (66–67–70), concerning this conclude from the letter, and the foregoing facts agreed upon as aforesaid, that there is such an estoppel as prevents any recovery by the plaintiff in this action.

A definition of equitable estoppel, or estoppel *in pais* is given Bigelow on Estoppel, page 369. He says: "The preclusion arises from matter of fact evidenced neither by record of adjudication nor by deed."

In Brant vs. Virginia Coal and Iron Co., 3 Otto, (93 U. S.), p. 335-6 the Court says: "It is difficult to see where the doctrine of equitable estoppel comes in here. For the application of that doctrine there must generally be some intended deception in the conduct of the party to be estopped, or such gross negligence on his part as to amount to constructive fraud by which another has been led to his injury. In all these cases, says Storey, the doctrine proceeds upon the ground of constructive fraud or gross negligence which in effect implies fraud.

"And, therefore, when the circumstances of the case repel any such inference, although there may be some degree of negligence, yet Courts of Equity will not grant relief. It has been laid down by a learned judge, that the cases on this subject go to this result only that there must be positive fraud, or concealment, or negligence 'so gross as to amount

to constructive fraud.' 1 Story Eq., 391. To the same purpors is the language of the adjudged cases. Thus it is said by the Supreme Court of Pennsylvania, that the primary ground of the doctrine is that it would be a fraud in a party to assert what his previous conduct had denied, when on the faith of that denial others have acted.

"The element of fraud is essential either in the intention of the party estopped or in the effect of the evidence which he attempts to set up. And it would seem that to the enforcement of an estoppel of this character, with respect to the title to property such as will prevent a party from asserting his legal rights, and the effect of which will be to transfer the enjoyment of the property to another. *The intention to deceive and mislead, or negligence so gross as to be culpable, should be clearly established.*

"It is also essential for its application with respect to the title of real property, that the party claiming to have been influenced by the conduct or declarations of another to his injury, *was himself not only destitute of knowledge of the state of the title, but also of any convenient and available means of acquiring such knowledge. Where the condition of the title is known to both parties, or both have the same means of ascertaining the truth, there can be no vstoppel.*"

This Court again says, in Oaksmith's Lessee vs. Johnson, 2 Otto, (92 U S.) page 346: "But such transfer, if established, would not have availed the plaintiff. It would only

have disclosed the possession of an equitable right to a conveyance which a Court of Chancery might enforce by compelling a transfer of the legal title from the defendant, if he purchased with notice of the plaintiff's equity, or by decreeing compensation from Roger Weightman if he conveyed the title to a *bona fide* purchaser. But, in the action of ejectment in the Federal Courts, the legal title must control, and to another power the plaintiff must look for the enforcement of any equitable rights he may possess."

See also Hays vs. Livingston, 34 Mich., 384; and Dodge vs. Freedman's Sav. & Trust Co., 93 U. S., (3rd Otto,) p. 383.

Edmund Chauncey was in California from the death of his father, Micajah Chauncey, in February, 1853, (34) (35) till some time in 1865. (62) (68).

The deed by Sarah Jane Kline and her husband, John Kline, to Lowell Morton, under which the adverse possession commenced, was made, executed and delivered in Berrien County, Michigan, in March, 1854. (56).

The foreclosure suit, wherein Sarah Jane Kline and her husband were complainants, was commenced in the Circuit Court of Berrien County, Michigan, Oct. 22nd, 1855, but no decree was obtained in such suit till Sept. 8th, 1857, (57) (67).

The letter on which all claim of estoppel depends was written in April, 1856 (59).

What information, if any, concerning the deed to Lowell

Morton, or the suit by Sarah Jane Kline was received by Edmund Chauncey is left to conjecture (66).

Lowell Morton was on the land in question (32), where he was well informed of the rights of Edmund Chauncey and had every opportunity to inform himself concerning the foreclosure suit; his letter to Edmund Chauncey was to make an inquiry, not to give information (66–59.)

Whatever true information Edmund Chauncey, up to the date of the letter, April 7th, 1856, may have received, might have shown that there was no deed by Sarah Jane Kline purporting to affect his title, or to be by his authority, and that the foreclosure suit was there without decree, and without jurisdiction (57–67); that the deed by Sarah J. Kline to Lowell Morton and the filing of the foreclosure bill, were both things of the past. What untrue information Edmund Chauncey may have received is not known, but it is evident that he was the only party likely to be deceived. He was in no wise interested to deceive any of the other parties concerned, but they were all interested to deceive him. He sought nothing from them; they sought his property illegally.

There is nothing in the case to show that Edmund Chauncey ever heard that his sister had, in March, 1854, made a deed purporting to convey all the land in question, or that Lowell Morton made any claim to all the land under any such deed; on the contrary it appears (66–59) that Lowell

Morton knew and recognized Edmund Chauncey's title as it really was.

C.

The letter contains nothing like a disclaimer. Throughout the letter Edmund Chauncey assumes that his title is known and undisputed. The letter uses this language, (59): "Mr. Morton wrote me a letter. He wanted to know if I intended to claim any of the Conger farm, (the land in question.) You can tell Mr. M., for me, he need not fear anything from me ; thank God, I am well off here, and you can claim all there. This letter will be enough for him. I intended to give you and yours all my property there, and more if you need. I would have given you all and saved cost. ° * ° * I will sign all my right, title, and interest to my sister."

These words imply that the writer knew no reason why his sister could not claim and have all that he intended to give her; that the information, true or false, which had come to Edmund Chauncey, was concerning the alledged foreclosure suit in which there was no pretence of decree, sale or deed until more than a year after the letter.

D.

The letter contains no ratification of anything done previously. The advice to sell all shows that Edmund Chauncey was not writing concerning what had been sold. The words of the letter as to intentions to give and intentions to make future transfer show plainly mere offers or declarations of intended gifts, or of intention to do something which is left undone by the writer, who believes that his title to the land is safe in him until he shall sign some proper writing in the future, when he can make such arrangements as he pleases to secure such distribution of the gifts as shall seem just. It must be presumed that Edmund Chauncey knew his title to the undivided half of the Conger farm; that he had signed nothing to impair his title and that he believed that if Lowell Morton had made any agreement with Sarah J. Kline it could only affect her title, there is no pretense of any authority from Edmund Chauncey prior to the letter for any sale of his property. Edmund Chauncey must have believed that Lowell Morton could not be in possession or have title except as co tenant; he could not reasonably suppose any greater claim by Morton; he believed that his title was fully admitted, and with such a belief the words "He need not fear anything from me" imply no more than that Lowell Morton need fear nothing in exercising all the rights of a co tenant.

E.

To the letter of Edmund Chauncey, with its liberal offers of gifts and friendship, no response appears to have been made. There was no acceptance whatever; the parties interested in depriving Edmund Chauncey of his property appear by all their acts to have rejected his letter and to have chosen to rely upon their wrongful and illegal proceedings in the foreclosure suit.

The last agreed statement of facts set forth in the Bill of Exceptions (57–58) shows that the defendant's claim of title and possession was under the warranty deed of Lowell Morton up to the time of the Circuit Court Commissioner's deed in the foreclosure suit, and that from the time of this deed the defendant's claim is thereunder. Their claim of Edmund Chauncey's property under the warranty deed from Sarah J. Kline was ended by the Commissioner's deed, and the claim through this deed could have no aid from the letter.

The foreclosure proceedings were in disregard of the letter; the last mentioned agreed statement is in these words: "And it was thereupon admitted and agreed in open Court by the counsel by the respected parties, that from the 1st day of April, 1854, to the date of the said Circuit Court Commissioner's deed, the aforesaid adverse possession was

claimed under the aforesaid deed to said Lowell Morton, and that ever since the date of said Circuit Court Commissioner's deed, such adverse possession had been claimed by virtue of said last mentioned deed."

F.

The foreclosure suit and Circuit Court Commissioner's deed thereon were under the mortgage made in 1848 by Micajah Chauncey (55), and this deed purported to reach back and cut off any conveyance by Sarah J. Kline as heir.

Under the statute of Michigan this deed purported to be equal in effect to a deed bearing the date of the mortgage and then duly executed and delivered by Micajah Chauncey, the mortgagor, and Ann L. Preston, the mortgagee.

Compiled Laws of Mich. for 1871, sec. 5154.

The reasonable meaning of Edmund Chauncey's letter of April 7, 1856, is, that he had heard that for the purpose of taking away the undivided half of these premises John Kline had procured the assignment to himself of Ann L. Preston's mortgage, and had regularly commenced the foreclosure suit, "paying lawyers and making costs," and having some understanding with Lowell Morton to bid at the mortgage sale or to take a conveyance from the purchaser, there-

at; and that Lowell Morton wished to know whether Edmund Chauncey intended to make defence in the foreclosure suit, bid at the sale or otherwise exercise any right he would have had if the foreclosure suit proceedings had been regular; the letter means that Edmund Chauncey did not intend to defend or bid in the foreclosure suit, and expected it would cut off his title if it proceeded to a legal sale. The letter does not suggest that Lowell Morton claimed such an impossibility as to have acquired Edmund Chauncey's title through his sister's deed in her own right, such a claim would have been inconsistent with the foreclosure suit which recognized Edmund Chauncey's title as perfect.

G.

If Edmund Chauncey's grantees are estopped from enforcing their title it must be because he by the letter contracted to convey his title to those who admitted its validity and desired to acquire it.

He asserted nothing untrue and in no wise deceived any one.

Wright vs. DeGroff, 14 Mich., 164.

The estoppel, if any, was by contract to be performed in

future, such performance to be by never making claim, by never bringing suit, or by some kind of transfer, thus implying his right to enforce his claim unless he is bound by contract not to do so. If there be any distinction between obligations by estoppel and obligations by contract it is here. There is the ordinary obligation by contract or there is nothing which even a court of equity could consider as affecting the plaintiff's rights. The only question concerning this letter which can in any Court be considered is this: Was there a contract binding on Edmund Chauncey's grantees?

If there was such contract, a bill in chancery for its specific performance can be sustained.

It is evident that such a bill can never be sustained; that an infallible defence would be interposed. The most evident grounds for such defence appear as follows:

1st.—Uncertainty of terms and meaning; uncertainty concerning the party to whom any transfer is to be made; uncertainty whether there is an obligation not to bring suit, not to assert claim, not to make defence in the foreclosure suit, not to bid at the sale, not to take advantage of the statutory rights of a defendant brought in by publication or not to interfere with the foreclosure suit in its due course to cut off title if rightly managed.

2nd.—Want of acceptance of any offers contained in the letter; there was not even an answer to the letter. There was never any request for any deed or other writing offered

in the letter. The chief request of the letter, that Sarah J. Kline and her husband should sell out and go to Edmund Chauncey, in California, was never heeded. Nothing in the letter offered received any attention or respect; there is a total want of mutuality, for neither Lowell Morton nor Sarah J. Kline made any responding promise or agreement. The letter was treated as if it were known to be written under the inspiration of Bacchus.

3rd.– Want of consideration. The letter at the utmost means no more than an intent or offer to make a gift. Edmund Chauncey neither received, nor was to receive anything in return.

4th.—Rejection. The parties concerned, as is declared in the record, elected to depend entirely on the foreclosure suit and the deed thereby obtained (57–58). In such suit there was no appearance by Edmund Chauncey, and no help from him was ever sought through the letter or otherwise. There is no conceivable means by which the letter which remained among privnte papers, can be any ingredient in the title obtained through pretended decree on bill taken as confessed, and the Circuit Court Commissioner's deed. The deed, in legal effect, purported to be a deed from Micajah Chauncey, the father of Edmund Chauncey, and to antedate and cut off Edmund Chauncey's title as heir. To claim persistently under this deed ever after its date was inconsistent with any claim connected with the letter. It was impossible that the foreclosure decree, sale and deed could be valid and invalid at the same time; that they could

cut off Edmund Chauncey's title and yet leave good a claim originating through his letter in 1856.

5th.—The letter was written under the influence of mistake or of deception, or of both, if Edmund Chauncey wrote the letter in ignorance of the truth that his sister's deed to Lowell Morton purported to convey all the land instead of her undivided half, or if it was written in ignorance of the want of publication to make constructive service in the foreclosure suit, and in ignorance of the truth that such suit was proceeding without jurisdiction (and such ignorance must be presumed from the facts in the case,) or if the letter was obtained by pretenses that Lowell Morton was in possession under a proper deed from Sarah Jane Kline not purporting to interfere with her brother's title. or that there had been due publication in the foreclosure suit.

6th.—Revocation. By the lapse of all reasonable time, without acceptance of the offers contained in the letter by the prompt action of Edmund Chauncey on his return from California to Michigan, in 1865, in which year his grantees received and recorded his deed of all his undived half of the land in question and commenced the suit in Berrien Circuit Court against the persons under whom the defendant now claim duly filing the proper *lis pen dens*, (62–63–34–36.) As the offers of Edmund Chauncey were purely voluntary and in the nature of gifts, they were revocable at will until legal acceptance, until a transfer was completed by proper writings duly delivered. If there was no more than a voluntary agreement not to disturb Lowell Morton, or Sarah

J. Kline, one or both of them in possession of the whole of the land, this would be a mere license personal in its nature not to run with the land to their grantees, and was revocaat will.

7th.—The defendants have gained no right to have Edmund Chauncey's undivided half of the land by reason of their deeds from Lowell Morton, or by reason of their improvements. They must be deemed to have made the improvements on the strength of their valid title to Sarah J. Kline's undivided half of the land, well knowin. that in any partition suit their rights, if they have any concerning these improvements, are sure of protection on general principles in equity—Hall v. Peddock, 21 New Jersey, Eq. Rep. 312—and need nothing from the letter.

There is no claim or notice accompanying the plea in this suit concerning improvements, although the statutes of Michigan make ample provisions for such claim and notice where the defendants claim an entirety in title.

Session Laws of Mich., 1875, p. 207.
Act 180, approved May 1, 1875.
Session Laws of Mich. for 1873, p. 473.

The Supreme Court of Michigan, however, in construing said statutes, has declared that they do not apply in suits between tenants in common.

Martin vs. O'Connor, 37 Mich. Rep. 440.

If any defendant has a warranty deed for Edmund Chauncey's title he must look to his covenants for his remedy. The record of deeds of Berrien county, Michigan, from the day the Circuit Court Commissioner's deed was recorded has shown enough to assure any one of the validity of the title now presented by the plaintiff. The assignment of Ann L. Preston's mortgage to John Kline, the bid at the sale by his wife, Sarah J. Kline, the deed to her on such sale, she being the sister of Edmund Chauncey and joint heir with him. The duly recorded deed from Mrs. Kline and her husband to Lowell Morton made after the assignment of the mortgage and declaring in its covenants that all the land in question was free from incumbrances, was perfect notice that the mortgage was extinguished by the deed of the alleged owners, if not by prior merger, and that the foreclosure suit was by parties who could not possibly have any mortgage lien or other interest in the land, because they had conveyed away all their rights, real or imaginary.

Lastly, the chancery record in the foreclosure suit through which the defendants have elected to claim title, showed that the Court never had any jurisdiction of Edmund Chauncey, and that his title was fully admitted in the bill.

Rothwell vs. Dewees, 2 Black, U. S. Sup. Court. 613.

24th Mich. Rep., 206, 360.

III.

The finding of facts by the Court is a complete special verdict.

U. S. R. S. of 1871, sec. 649, and marginal citations.

On this special verdict the plaintiff is entitled to judgment in his favor in this Court.

"Where there is a case stated, or special verdict, the Court of Error will not only reverse the judgment below if found erroneous, but enter a correct and final judgment."

Graham vs Bayne, 18th Howard, page 63.

IV.

The Court below erroneously decided (54) that this suit must abate as to the undivided one-fourth of the land belonging to William W. Wheeler, originally

In the case Penney v. Todd, decided by the Supreme Court of Michigan in June 1879, in speaking of the effect of a deed by the plaintiff in ejectment after commencement of suit, the court says: "Where a plaintiff in ejectment claims and shows prima facie a title in fee simple to the premises at the time of the commencement of the action, it is error for the court to hold that a deed from the plaintiff to his wife dated and executed after action commenced operates as a bar and to render judgment for defendant; Section 6282 comp. L. has no application to such a case." 2. "Such a deed, if furnishing any ground of defense is not admissible under the pleadings, but a special notice in the nature of a plea puis darrien should be given. Buell v. Irwin, 24 Mich. 149." Michigan Lawyer for June 1879, p. 256.

tiff's in the suit, and who has died since its commencement. (68) The death of said William W. Wheeler and the names of his administrator and father Bacon Wheeler, and of his sole heir at law, Mary E. Wheeler, were duly shown (53), and the Court held that because of the deed from said William W. Wheeler to his said father, made July 1st, 1873, (52) and the death of said William W. Wheeler in August, 1873, both dates being after the commencement of this action, therefore this suit must abate as to all rights of the deceased plaintiff, and that although neither said deed nor said death could have any such effect, yet that both together must have such effect. This material error is presented by proper exception.

U. S. R. S. of 1871, sec. 955 and 956.

Compiled Laws of Michigan for 1871, sections 5834, 5835, 5836, 6233.

Vickberry vs. Beir, 16th Michigan Rep., 54.

James vs. Bennett, 10 Wendell, 540.

Tyler on Ejectment and Adverse Possession, 630.

Boynton vs. Hoyt, 1 Demo., 57.

Van Renselaer vs. Owen, 33 How., 16.

Jackson vs. Jeffries, 1 A. K. Marsh, [90].

Wood vs. McGuire's Children, 21 Georgia, 577.

Jackson vs. Leggett, 7 Wen., 370.

Frier vs. Jacksen, 8 Johnson Rep., 507.

Miller vs. Groves, 44 Ill., 50.

The judgment [49-50] is erroneously against William W. Wheeler as well as against Orlando B. Dickinson.

GEORGE W. LAWTON,
Counsel for Plaintiff in Error.

UNITED STATES OF AMERICA.

IN THE SUPREME COURT.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

NO. 118 OCTOBER TERM, 1879.

ORLANDO B. DICKINSON, *Plaintiff in Error,*

vs.

CALVIN COLGROVE, *Defendant in Error.*

REPLY TO THE BRIEF FOR THE DEFENSE.

GEORGE W. LAWTON,
Attorney for Plaintiff in Error.

I.

THE STATUTES OF LIMITATION.

The argument at page 11 of the brief for the defendants to overrule the Supreme Court of Michigan in the construction of the Michigan statutes of limitation seems to refute itself.

This argument begins by complaining of the decision of 32 Mich., 27, because this decision does not agree with the statute it condemns. Probably no decision declaring a statute unconstitutional or inoperative ever did agree with such statute.

The next complaint is that the decision does not sufficiently assert or explain that unconstitutionality of the statute.

The decision distinctly mentions the unconstitutionality and is written to explain the same.

Section 9 of Act No. 227 of 1863, changed to Section 7165, C. L. of 1871, not only cut off causes of action for which only one day or one month of the 15 years was left, it also cut off those for which the 15 years had already expired.

The brief for the defense concedes that there is serious infirmity in the statute, and attempts to overrule the Michigan Supreme Court only as to the extent of this infirmity and its name.

The features of unconstitutionality are too plain to require the name.

The argument for the defense, page 12, insists that because the law of 1863 is an amendment, the prior law cannot be considered, no matter what vested rights were acquired under such prior law, and no matter to what extent the Supreme Court of the State have declared the amendment inoperative, and the argument appears to claim that if the retroactive part of the statute of 1863 were duly declared void, still the plaintiff's cause of action must be barred for the want of any staute to bar it.

The argument for the defense insists, p. 13, that the time within which this or any other action must be brought is definitely fixed, because in each case the Court can subtract from the 15 years so much thereof as was elapsed prior to the new law.

But an important element in the calculation is here omitted, namely, that wherever the Section 9 aforesaid did not give reasonable time it is void, and that the subtraction to be made on this account leaves the supposed fixed time as uncertain as any feelings of the State judges who are to make the calculation for each case. In other words, the statute, as to prior causes of action, is no more a law, but an excuse for unauthorized and arbitrary discretion in each man's case.

This argument for the defense continues with a claim that if the courts can unmake a part of the statute, because it cuts off causes of action, without giving reasonable time,

the courts ought to make and fit into the law a new part on the subject of reasonable time.

Probably the power to declare laws inoperative or unconstitutional is a very different thing from the power to legislate.

Lastly, this argument claims, p. 14, that the decisions of the Supreme Court of Michigan, 32 Mich., 27—37th Mich. 289—are on questions of general law and need not be followed.

These decisions are to construe particular State statutes. They make use of principles of reasoning and of common sense, and if the use of these principles deprives these decisions of the effect to be given them, according to Davie v. Briggs, 97th U. S., 638. Then to have such effect they should have made no use of these principles, and the better the reasoning the less the effect.

The record (62) declares as confessed truth, 'that from the 1st day of April, 1854 to the date of the Circuit Court Commissioner's deed the aforesaid adverse possession was claimed under the aforesaid deed to Lowell Morton, and that ever since the date of said Circuit Court Commissioner's deed, such adverse possession has been claimed by virtue of said deed."

The date of this deed was in 1859, and however worthless the deed the defendants and their predecessors elected to abandon, as against Edmund Chauncey and his grantees, all claim under the deed to Lowell Morton as a source of title,

and to claim their title to Edmund Chauncey's undivided half of the land under the Circuit Commissioner's deed and to found their adverse possession thereon

By this election all advantage by prior possession is lost, so that even if section 9 of the Act of 1863 were in full force the fifteen years must begin with the Circuit Court Commissioner's deed in 1859, and would not expire till some time in 1874 about one year after the commencement of this suit.

Gower v. Quinlan, 40 Mich., 574.

II.

THE LETTER.

In regard to the letter of Edmund Chauncey the Michigan Equity Cases referred to in the brief for the defense, pages 14 and 15, are based on valid contracts or plain equitable estoppels and are plainly irrelevant, for the Supreme Court of Michigan says in Conrad v. Long, 33 Mich., 81, "As nothing but a conveyance of the legal title could defeat an action of ejectment this testimony was properly excluded."

The assertion that the letter is a ratification of the deed

from Sarah J. Kline to Lowell Morton is refuted by the evident truth that the deed ignores Edmund Chauncey and the letter ignores the deed.

The consideration which the brief (p. 15) asserts to bind Edmund Chauncey has two elements, the warranty deeds, and the improvements. No authority is cited to show that he who has a worthless voluntary contract for land can make it binding by selling the land by deed with covenants. If he by these covenants gets the price of a title which he does not own, it is difficult to understand wherein he loses or is wronged by being liable to return this price.

All legal and equitable rights in the improvements under consideration either in actions of ejectment or in suits for partition are in Michigan fully protected.

The brief for the defense disregards the words of this court in Bront v. Veginia, Coal and Iron Co., 93 U. S., 336-7, "Where the condition of the title is known to both or both have the same means of ascertaining the truth there can be no estoppel."

If Edmund Chauncey was not bound by valid subsisting contract he is not bound at all. On the question whether he was bound by contract it is sufficient to refer any text book on Specific Performance or to the plaintiff's brief, p. 22.

The brief for the defense, p. 17, insists "that one who purchases by quit claim cannot be a bona fide purchaser." This is true in many States but not in Michigan.

Battershall v. Stephens, 34 Mich., p, 74.

The Statutes of Michigan have made important changes in regard to the form of Declaration in this action, Compiled Laws of Michigan 1871, Section 6210.

In regard to joining defendants, C. L. Mich., Section 6230.

In abolishing the effect of adverse possession to avoid deeds, 4209.

The closing sentences of the brief for the defense attempt to claim that in an action of ejectment title merely equitable can, if evidenced by writing, prevail against the legal title.

This claim is in open defiance of repeated decisions of the Supreme Court of Michigan and of this Court. See plaintiff's brief, p. 11, and the words of this Court in Foster v. Mora, 98 U. S., p. 428, "In actions of ejectment in the United States Courts the strict legal title prevails. If there are equities which would show the right to be in another these can only be considered on the equity side of the Federal Courts."

In Oaksmith's Lessee v. Johnson, 92 U. S., p. 346, this Court decides that a bond for a conveyance duly executed and after full payment disclosing a perfect equitable right to a conveyance is of no avail in an action of ejectment.

GEO. W. LAWTON,
Attorney for Plaintiff in Error.

SUPREME COURT

OF THE

UNITED STATES.

October Term, A. D., 1879.—No. 118.

ORLANDO B. DICKINSON, Survivor,
Pl'ff in Error.
vs
CALVIN GOLGROVE,
et. al.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

HUGHES, O'BRIEN & SMILEY,
Counsel for Deft's in Error.

SUPREME COURT

OF THE

UNITED STATES.

October Term, A. D., 1879.)—No. 118.

ORLANDO B. DICKINSON, SENIOR,
Pl'ff in Error.
vs
CALVIN GOLGROVE,
et. al.

Brief and Points for Deft's in Error.

STATEMENT OF FACTS.

This is an action of ejectment brought in the court below by the plaintiff in error against about sixty defendants, to recover an undivided fourth of seventy-seven acres of land now constituting a part of the village of Benton Harbor.

Prior to March 9th, 1848, Micajah Chauncey owned and possessed the land in question, which was situated in Berrien County, in this State.

On that day said Chauncey mortgaged said land to Ann L. Preston.

February, 1853, Micajah Chauncey died, the mortgage not then being paid.

Micajah Chauncey left two heirs, Edmund Chauncey and Sarah J. Kline, wife of John Kline.

Edmund Chauncey lived in California, and Sarah J. Kline in Michigan.

March 3d, 1854, Sarah J. Kline and John Kline deeded the whole of said land to Lowell Morton, reciting in the deed that they were the heirs at law of Micajah Chauncey.

April 1st, 1854, Lowell Morton took possession of said land and afterwards sold to the defendants in parcels—selling to each one or more village lots.

Morton and the defendants have held the whole land adversely ever since April 1st, 1854, up to the time of bringing suit, to-wit: March 6th, 1873.

August 15th, 1853, Ann L. Preston assigned her mortgage to John Kline.

Afterwards, John Kline foreclosed this mortgage in chancery in the Circuit Court of Berrien County, joining with him as a complainant, his wife, and making Edmund Chauncey a defendant.

January 22d, 1859, upon the foreclosure aforesaid, Sarah J. Kline bid in said property at said foreclosure sale.

Just prior to April 1st, 1856, Lowell Morton learning that Edmund Chauncey was not of the children and heirs at law of Micajah Chancery, requested Eleazer Morton to write Edmund Chauncey for him, to learn whether he, Chauncey, made or intended to make any claim to his property.

In reply to this letter, Edmund Chauncey writing a letter to his sister from California, dated April 1st, 1856, says: "Mr. Morton wrote me a letter. He wanted to know if I intended to claim any of the Conger farm, (meaning the

lated in question). You can tell Mr Morton for me he need not fear anything for me, thank God I am well off here, and you can claim all there. This letter will be enough for him. I intended to give you and yours all of my property there, and more if you need."

This letter was shown to, or came to the knowledge of Lowell Morton, who afterwards sold to the defendants in parcels, and gave them warranty deeds, and they have since occupied and improved the premises.

July 19th, 1865. Before commencement of suit the plaintiff and James Witherell took a quit claim deed of an undivided half of the land in question from Edmund Chauncey and wife.

This suit was commenced March 6th, 1873.

See Record, p. 17, folio 39, to p. 19, folio 44, for the finding by the court.

ARGUMENT.

I.

The statute of limitations had run against the plaintiff's claim before this action was brought. It is admitted that defendants held adversely from April 1st, 1854, to March, 1873, a period of nearly nineteen years.

March 20th, 1863, the Legislature of Michigan passed the following act, which took effect January 1st, 1864:

SECTION 1. The people of the State of Michigan enact, That section five thousand three hundred and fifty, five thousand three hundred and fifty-one, five thousand three hundred and fifty-three, five thousand three hundred and fifty-four, five thousand three hundred and fifty-five, and five thousand three hundred and fifty-eight, of the com-

piled laws, the same being sections one, two, four, five, six and nine of chapter one hundred and thirty-nine, of the revised statutes of one thousand eight hundred and forty-six, be, and the same are hereby severally amended so that said sections shall read as follows:

SECTION 1, That, after the thirty-first day of December, in the year of our Lord eighteen hundred and sixty-three, no person shall bring or maintain any action for the recovery of any lands or the possession thereof, or make any entry thereupon, unless such action is commenced, or entry made within the time herein limited therefor, after the right to make such entry, or to bring such action, shall have first accrued to the plaintiff, or to some person through whom he claims, to wit:

First, Within five years, where the defendant claims title to the land in question, by or through some deed made upon a sale thereof by an executor, administrator or guardian, or by a sheriff, or other proper ministerial officer, under the order, judgment, decree or process of a court, or legal tribunal of competent jurisdiction within this State.

Second, Within ten years where the defendant claims title under a deed made by some officer of this State, or of the United States, authorized to make deeds upon the sale of lands for taxes assessed and levied within this State;

Third, Within fifteen years in all other cases.

Section 2. If such right or title first accrued to an ancestor, predecessor, or grantor of the person who brings the action or makes the entry, or to any person from or under whom he claims, the said above periods of limitation shall be computed from the time when the right or title so first

accrued to said ancestor, predecessor, grantor or other person.

Section 9. *When any right of action or of entry shall have accrued before the time when these amendments shall take effect as law, the same shall be governed by this Chapter as amended.*

Provided, That no entry shall be made or action maintained, in any case where such right of action shall already have become barred by any law now or hereafter in force in the territory of the State of Michigan: And provided further, that all actions commenced and pending when these amendments shall become a law, shall not be affected thereby, but shall be governed by the law in force, touching the same at the time of the commencement thereof.

See laws of Michigan, 1863, pp. 388-390.

The statute of 1863 above cited applied to this case as the right of entry accrued April 1st, 1854, before this law took effect, and the 9th section provided that such cases should be governed by that law.

Under which subdivision of section one of the act of 1863, just cited, does this case fall, the first one, requiring five years, the second requiring ten years, or the third requiring fifteen years adverse possession ?

We say it did not come under the first subdivision, for the reason that the defendant did not claim under such a deed made under a "DECREE of a COURT of COMPETENT JURISDICTION.

The court rendering the decree under which the sale was made had NO JURISDICTION.

The question might arise under this statute whether it means a court having JURISDICTION of THE SUBJECT MATTER

or whether it means a court having JURISDICTION of the CASE and the PARTIES IN THE SUIT IN WHICH THE JUDGMENT OR DECREE IS RENDERED AND SALE MADE.

The Supreme Court of Michigan has decided this question, and held that it means a court having jurisdiction of the case in which the judgment is rendered, and if a party should hold under a deed made upon a sale in a case where the court had no jurisdiction over the parties by reason of not complying with some statutory proceeding by which they might obtain jurisdiction, he would not hold under the first subdivision of that section and could not avail himself of its provisions.

See Miller vs. Babcock, 29 Mich., 526.

The case last cited was an action of ejectment in which the defendant claimed title under a deed made upon an execution sale in a case brought by attachment proceedings.

The plaintiff claimed that the judgment in attachment was void for the reason that the court lost jurisdiction of the attachment case, because the plaintiff failed to advertise within thirty days after the return day of the writ as required by statute, there being no personal service upon the defendant.

The Supreme Court sustained this point and held that the judgment was void, but the defendant claimed that as the court assumed to give judgment in the attachment suit and an execution issued, and a sale of the lands was made and deed given thereon, and as the defendant was in possession of the land, claiming under this deed when suit was brought and had been for more than five years, that plaintiff's remedy was barred by the act of 1863.

But the Supreme Court held that this point was not well taken, that to bring the case within this section there

must be a judgment, in fact, and that a void proceeding wherein the court had no jurisdiction was not such a judgment, and the defendant could not be claiming under such a deed as was contemplated by this statute of 1863.

The court which rendered the decree in the case of Sarah J. Kline and John Kline, complainants, vs. Edmund Chauncey, defendant, never had jurisdiction of the defendant, and therefore its decree was void, sale void and deed void, and under this statute of 1863, the defendant could not claim by or through that deed. See record, p. 18, folio 41.

This is a legal reason why the defendants do not come within subdivision one of section one of the act of 1863.

But there is also a reason founded on fact why the defendants do not come within that subdivision, viz: Lowell Morton went into possession April 1st, 1854, under a deed from John and Sarah J. Kline, purporting to convey the title to the whole property, nearly five years before the sale was made upon which the deed was given upon the foreclosure proceedings, and has held possession under said deed ever since.

John Kline and Sarah J. Kline obtained their commissioner's deed in 1859, and have held it ever since, never having since deeded to Lowell Morton or his grantees.

We say, therefore, that as matter of FACT the defendants do not and never have claimed under a deed such as is contemplated by subdivision one, of section one of the act of 1863.

Now, as the defendants do not claim under the first subdivision or the second, they fall under the last one, to-wit: "FIFTEEN YEARS IN ALL OTHER CASES."

Has not the statute run against the plaintiff under this subdivision?

By section nine this statute was expressly given a retraction as well as a prospective operation. The statute commenced to run on the first day of April, 1854, and the fifteen years would expire on the first day of April, A. D. 1869.

Only nine or ten years had elapsed when this statute took effect, leaving five or more years to elapse before the plaintiff would be barred under this statute.

It can not be pretended that this was not ample time in which to bring the suit, but 1869, April 1st arrived, this statute was still in force, having both retraction and prospective operation, and no suit had been brought, the right and title of the defendants had vested.

April 3d, 1869, the section nine of the act of 1863 was amended so as to give that statute prospective operation only, but before that amendment the defendant's title had vested and was beyond the reach of legislative authority.

Sec. laws of 1869, p. 218, 219, the act of April 3d, 1869, amending the act of 1863, is as follows: (5,358) Section 9. When the right of action or entry shall have accrued before the time when these amendments shall take effect as laws, the same shall not be affected by these amendments; but all such actions and rights shall be governed and determined according to law, under which the right accrued, in respect to the limitations of such actions of right or entry.

Approved April 3d, 1869.

It can not be objected to this, that the deed from

John and Sarah J. Kline only conveyed their interest in the land and left their grantee, Morton, a tenant in common with Edmund Chauncey, so that the statute of limitations would not run, for the obvious answer to this is that the deed of Sarah and John Kline purported to convey the whole to Morton, and operated as an actual ouster, and when they put Morton in possession under that deed the statute of limitations would commence to run.

See Larman vs. Hueys, 13, B. Mon, 436.

Cutler vs. Matzer, 13 Serg. and Rawle, 356.

Bogardus vs. Trinity Church 4 Paige, ch. 178.

Jackson vs, Smith, 13, John, 406.

Clapp vs. Bromagham, 9 Cowen, 530.

Thomas vs. Pickering 13 Me., 337.

In the case of Ludwig vs. Stewart, 32 Mich., 27 cited by the counsel for plaintiff, the Supreme Court of Michigan undertake to say that the statute of 1863 does not apply to cases where the cause of action accrued before the passage of the act.

It should be a sufficient reply to that case to say that the statute itself by section nine, (9) says expressly that it DOES APPLY, and that cases arising before its passage shall be determined by it.

The court did not say it was unconstitutional or that the statute was opposed to any positive rule of local law. The court held that it did not like to take the responsibility of saying whether the law when applied to a particular case gave the plaintiff a reasonable time in which to bring an action, and because it did not wish to decide that question, it held the statute inapplicable, not-

withstanding the statute itself said it was applicable.

The Supreme Court of Michigan seem to hold that the legislature should fix a reasonable time in which the action should be brought, and that the court should not be called upon to decide whether the time given is reasonable or not. Yet the courts always assume to decide that a certain time given is not reasonable, and if the court may do this, why may it not say that a certain other time is reasonable.

The fact is that what is reasonable time in one case may not be in another, and it should rest with the court to say under all the circumstances whether the time is reasonable or not. In a case where reasonable time is given the statute should be held to apply as the legislature has declared it shall. The legislature having enacted that this law of 1863 should apply retroactively, the court should apply it to the case unless it finds that in the particular case the time allowed is unreasonable.

In this case about five years remained in which the plaintiff might bring his suit, and it can hardly be said that that is not a reasonable time.

See Smith vs. Morrison, 22 Pick. 430.

Holcomb vs. Tracy, 2 Minn. 241.

The law of 1863 was an AMENDMENT of the previous limitation law of Michigan, and although the Supreme Court of Michigan say that the case would be governed by the law in force, prior to the act of 1863, the previous law had no existence, force, or effect. The sections amended were "AMENDED SO AS TO READ AS FOLLOWS," viz: as enacted by the law of 1863.

See section one of act of 1863, before cited.

So that after the passage of the law of 1863, there was no other limitation law in force, and the case could not as supposed, by the Michigan Supreme Court be governed by the previous law. That law was repealed by the act of 1863, by striking it out and inserting the corresponding sections of the act of 1863, in its place.

This court is not bound to follow the decision of the Supreme Court of Michigan upon this question.

That court did not decide that the law in question was in conflict with any constitutional provision or rule of local law. It held the statute inapplicable to the case before it, because that court would not assume to say whether the time allowed, to wit: three years was sufficient and reasonable or not.

They held that the statute was inapplicable because it did not fix a certain time, and the court could not fix the time in which suit should be brought in cases where the statute had commenced to run.

The time in which this or any other action should be brought was just as definitely fixed by this statute as though it had enacted that as to existing cases the action must be brought within five years or three years, or any other time. In effect it said the action must be brought within fifteen years, counting as a part of it, the time already elapsed since the right of action accrued.

Now, if the legislature had fixed the time at one month, every one would say it was unreasonable, and if they had

fixed it at five years, every one would say it was reasonable and sufficient. But in either case whether the time is reasonable or not, is for the court to decide, and why can not the court decide it when the legislature has said the time shall be fifteen years, counting as part of it the ten years already run, as well as when the legislature says the time shall be five years from the time the act takes effect ?

See the following cases where the courts have pronounced upon the reasonableness of the time.

Berry vs. Ramsdall, 4 Met., Ky, 292.

Pearces Heirs vs. Patten, 7 B. Monroe, 162, 166.

Lewis vs. Harbin, 5 B. Monroe, 564.

Jackson vs. Lamphire, 3 Peters, 280.

We cannot discover why a court cannot decide what is reasonable time as well as it can decide what is unreasonable?

The question determined by the Supreme Court of Michigan, is one of general law, upon which this court will pass without being bound by the Michigan decision.

Swift vs. Tyson, 16 Peters 1.

Alcott vs. Supervisors, 16 Wall. 678.

II.

The letter of April 1st, 1856, operates as an estoppel upon Chauncey and his grantee, the plaintiff.

In this case Edmund Chauncey when called upon to say whether he had any intention of asserting any title to the land, disclaimed any such intention, and expressed his satisfaction with and ratification

of the act of his sister in selling the whole title, and for the purpose of satisfying her grantee respecting his title and inducing him to regard it as a good one, said that he intended giving it to his sister, and that he would not assert title.

This came to the knowledge of both Morton and Mrs Kline, and was intended by Edmund Chauncey for them. Morton and his grantees have since acted upon the theory that this statement was true and made in good faith, he, (Morton,) by selling and giving a warranty deed, and thus making himself liable upon the covenants of warranty, and they, his grantees, by accepting such title and making improvements upon the land in reliance upon it.

Is not this sufficient to estop him now from asserting that title which he then disclaimed and promised not to assert?

In Faxon vs. Faxon, 28 Mich., 159, a mortgagee persuaded a son of the mortgagor after the death of the latter, when the land was of little value, and the son contemplated removal to another region, to remain on the farm and support the family under a promise that he would never enforce his mortgage. After the son had remained some time and improved the farm, it was held that the mortgagee was estopped from foreclosing the mortgage.

On page 161, the court say: The complainant may have estopped himself without any positive agreement if he intentionally led defendents to do or to abstain from doing any thing involving labor or expenditure to any considerable amount by giving them to understand they should be relieved from the burden of the mortgages; and see further remark of the same court, where they say: "In Harkness vs. Toulman, 25 Mich., 80, and Truesdale vs. Ward, 24 Mich., 117, this principle was applied in the former case to the extent of destroying a chattel mort-

gage, and in the latter of forfeiting rights under a land contract where the parties had been induced to believe that they had been abandoned. There is no rule more necessary to enforce good faith than that which compels a person to abstain from enforcing claims which he has induced others to suppose he would not rely on."

See also cases above cited, 25 Mich., 80 and 24, Mich. 117.

See also Gregg vs. Von Phul, 1 Wall. 281.

Swain vs. Seamans, 9 Wall. 273.

We make the point that the letter of April 1st, 1856, operated as a ratification by Edmund Chauncey, of the sale of the entire title to Morton. It cannot be an objection to this ratification that it was not in the form required by statute for conveyances of title, the party making it is estopped from making objection to its form or legality.

Stowe vs. U. S., 19, Wall. 14.

Lyon vs. Pollock, No. 78, Oct. Term, 1878.

The objection made to this estoppel by the plaintiff, is that there was no CONSIDERATION for the promise not to assert title, but it is not upon this ground of consideration that estoppel works. An estoppel may be perfect without any consideration if the other party has acted upon it to his prejudice. Indeed a prejudice or disadvantage to one party is as much a consideration, as a benefit or advantage to the other.

Faxon vs. Faxon, 28 Mich., p. 161.

Another objection made to this estoppel is that it was not a representation or concealment of any FACT, but a PRO-

MISE not to assert title, but the Supreme Court of Michigan, in the case last cited, and also in 24 Michigan, 117, applied the doctrine of estoppel to a PROMISE NOT TO ASSERT A CLAIM OR TITLE TO LAND.

If Edmund Chauncey can not assert this title against the defendants, his grantee cannot.

FIRST, For the reason that the plaintiff, his grantee, took by QUIT CLAIM deed, and one who purchases by quit claim can not be a bona fide purchaser, but takes with notice of any equity that exists against the land in favor of other persons.

Villa vs. Rodriguez, 12 Wall. 339.
May vs. Le Claire, 11 Wall. 232.
Oliver vs. Piatt, 3 How, 363.

SECOND, The defendants were in possession of this property and that was sufficient to put the plaintiff upon inquiry as to ALL the RIGHTS and EQUITIES which the defendants had in the property.

Sweezey vs. Russell, 22 Michigan, 236.

This matter of estoppel may be taken advantage of in law as well as in equity.

There is a conflict of authority upon the question, whether a party may rely upon an estoppel IN PAIS in an action involving the title to real estate where the proof of the estoppel rests in parol. Many authorities hold that such a defense may be made at law.

Durham vs. Alden, 20 Me., 228.
Rangeley vs. Spring, 21 Me. 137.

Hatch vs. Kimball, 16 Me. 146.

Manner vs. Railway Co., 26, Wis. 84.

Brown vs. Bowen, 30 N. Y., 519.

Copeland vs. Copeland, 28, Me., 525.

Stevens vs. McNamara, 36, Me., 176.

Bigelow vs. Foss, 59, Me., 162.

McCune vs. McMichael, 29 Geo. 312

Beaupland vs. McKeen, 28 Pa. St. 124.

Shaw vs. Beebe, 35 Vt. 205.

Brown vs. Wheeler, 17 Conn. 345.

Burham vs. Turbeville, 1 Swan. 437.

The authorities which object to the doctrine place their objection upon the ground that the statute of frauds requires conveyances to be by deed or in writing.

See Hayes vs. Livingston, 34, Mich., 384.

Bigelow on estoppel, pp 534, 535, 2d ed.

This objection can not apply to this case, as here the matter relied upon rests in writing.

HUGHES, O'BRIEN & SMILEY,
Counsel for Defendants in Error.